

Competition Act 1998

Investigation into suspected anti-competitive conduct in connection with the procurement for contracts to supply services at Heathrow and Derwentside Immigration Removal Centres

No Grounds For Action Final Decision

1. This document (the '**Final Decision**') is structured as follows:
 - (a) Section A provides a summary of the Competition and Markets Authority's (the '**CMA**') Final Decision.
 - (b) Section B sets out the background to the CMA's investigation.
 - (c) Section C sets out details of the CMA's investigation.
 - (d) Section D sets out the CMA's assessment of the evidence it gathered and its final conclusions on that evidence.
 - (e) Section E sets out the CMA's Final Decision.

A Summary

2. The CMA launched an investigation on 1 March 2022 (the '**Investigation**') under Chapter I of the Competition Act 1998 (the '**Act**') into suspected anti-competitive agreements or concerted practices between Mitie Care and Custody Ltd ('**MCC**') and Mitie Group plc (collectively '**Mitie**')¹ and PAE Incorporated ('**PAE**')² (together 'the **Parties**'). The Investigation relates to the ongoing procurement processes being run by the Home Office (the '**HO**') for the contracts to supply certain services at two immigration removal centres ('**IRCs**') in Heathrow (together the '**HIRC**')³ and one IRC in Derwentside (the '**DIRC**') (the '**HIRC Tender**' and the '**DIRC Tender**' respectively, together the '**Relevant Tenders**'). In particular, the CMA investigated whether PAE's withdrawal in

¹ References to Mitie in this Final Decision also encompasses any other legal entity forming part of the same undertaking including MCC and Mitie Group plc.

² References to PAE in this Final Decision also encompasses any other legal entity forming part of the same undertaking as PAE Incorporated.

³ HIRC comprises Colnbrook IRC and Harmondsworth IRC.

September 2021 from the Relevant Tenders was the result of an anti-competitive agreement or concerted practice with Mitie in breach of Chapter I of the Act.

3. Both Mitie and PAE were participating, in the spring and summer of 2021, in the initial procurement stages of the Relevant Tenders. When PAE notified the HO in September 2021 that it was withdrawing from the Relevant Tenders, it gave, in writing, as its reasons for doing so that it had been '*requested*' by Mitie to do so and that there was a '*conflict of interest*' arising from the existence of a joint venture between the Parties. Together with other information, this gave the CMA reasonable grounds to suspect⁴ the existence of an anti-competitive agreement or concerted practice between the Parties, in breach of Chapter I of the Act.
4. Following an extensive investigation, the CMA has concluded that the balance of the evidence obtained indicates that PAE's decision to withdraw from the Relevant Tenders was unilateral and not the result of an anti-competitive agreement or concerted practice with Mitie. In particular, the CMA has found that the balance of the evidence obtained did not indicate that any request was made, any pressure was exerted, or any incentives were offered by Mitie directly or indirectly to PAE to withdraw. In view of this, the CMA has therefore decided that the conditions of the Chapter I prohibition are not met in this case and there are no grounds for further action.⁵

B Background

The Relevant Tenders

5. The Relevant Tenders relate to the operation, management, maintenance and the provision of related services at HIRC and DIRC.⁶
6. The HO initiated expressions of interest in the Relevant Tenders in February 2021 and published a contract notice in July 2021.⁷ Mitie and PAE were two companies who expressed an interest in the Relevant Tenders and progressed

⁴ As set out at paragraphs 13–15 below, under section 25 of the Act, the CMA may launch an investigation where it has reasonable grounds for suspecting that an infringement of competition law has occurred.

⁵ As described in rule 10(4) of the Competition and Market Authority's Competition Act 1998 Rules, the CMA may make a decision that there are no grounds for action in respect of an agreement (including a concerted practice) where, inter alia, the conditions of the Chapter I prohibition are not met.

⁶ The HO is responsible, under the Immigration Act 1971, the Immigration and Asylum Act 1999, the Nationality Immigration and Asylum Act 2002 and the Immigration Act 2014 for detaining and/or enforcing the removal of certain individuals. The HIRC and DIRC are immigration removal centres in which individuals are held overnight.

⁷ Find a Tender Website - HIRC and DIRC Contract notice, reference: 2021/S 000-017284, published 21 July 2021, <https://www.find-tender.service.gov.uk/Notice/017284-2021?origin=SearchResults&p=1> and Prior Information Notice, reference: 2021/S 000-002422, published 5 February 2021, <https://www.find-tender.service.gov.uk/Notice/002422-2021?origin=SearchResults&p=1>.

to stage two out of four stages of that process in September 2021. PAE withdrew from the Relevant Tenders in September 2021. Mitie also withdrew from the DIRC Tender in September 2021, although this withdrawal is not material to the Investigation. The HO is due to award the Relevant Tenders in April 2023.

The Parties

Mitie

7. Mitie is a UK facilities management and professional services provider.⁸ Mitie is the largest provider of IRC management and operational services for the HO.⁹ Mitie, through Mitie Care and Custody Ltd ('MCC'), is the incumbent operator of both HIRC and DIRC. Mitie has managed operations at HIRC since 2014,¹⁰ and the HO awarded Mitie the DIRC emergency contract in 2021.¹¹

PAE

8. PAE is a US government services contractor. Prior to February 2022, PAE Inc was a publicly traded holding company.¹² PAE operates its contracts through various subsidiaries, including Bravour Leistungen GmbH ('**Bravour**'). Other than its interest in a joint venture with Mitie (see paragraph 10 below) active in the defence procurement sector, PAE has limited UK business interests.
9. In the first quarter of 2021, PAE was exploring business development opportunities in Europe for its Readiness & Sustainment (**R&S**) business unit which included Bravour. It appointed a consultancy firm based in Germany, [X] ('**PAE's Bid Consultant**'), to identify potential European projects.¹³ PAE's Bid Consultant identified the Relevant Tenders to PAE as a possible opportunity, notwithstanding that R&S's principal business is in aircraft and vehicle maintenance.¹⁴ Concerned at meeting annual financial targets,¹⁵ a senior R&S employee (the '**Senior R&S Employee**')¹⁶ decided actively to explore the Relevant Tenders with support from PAE's Bid Consultant, a manager within

⁸ See Mitie's webpage, available at <https://www.mitie.com/about-mitie/>.

⁹ Mitie's Voluntary Submission to the CMA dated 27 June 2022, paragraph 7.

¹⁰ See Mitie's webpage, available at <https://www.mitie.com/heathrow-immigration-removal-centre/>.

¹¹ Find a Tender - HO Contract award notice - 29 June 2021 - <https://www.find-tender.service.gov.uk/Notice/014895-2021?origin=SearchResults&p=1>.

¹² On 15 February 2022, Amentum Government Services Holding LLC announced that it had acquired PAE. See Amentum Completes Acquisition of PAE | Amentum, <https://www.amentum.com/amentum-completes-acquisition-of-pae/>.

¹³ Witness Statement of [Senior R&S Employee], dated 26 September 2022, page 2, paragraph 4 and Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 2, paragraph 4.

¹⁴ Witness Statement of [Senior R&S Employee], dated 26 September 2022, page 1, paragraphs 1 and 4–8.

¹⁵ Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 2, paragraph 8 and Supplementary Witness Statement of [Senior R&S Employee], dated 5 December 2022, page 3, paragraph 11.

¹⁶ [X].

R&S based in Germany and a senior manager of PAE's capture (i.e business development) function¹⁷ (together the '**PAE bid team**').¹⁸ As R&S had no prior experience of dealing with the HO, PAE's Bid Consultant acted as PAE's sole point of contact with the HO including submitting required documents and information on the HO's procurement portal.¹⁹

Mitie and PAE UK joint venture

10. Mitie and PAE are partners in a UK joint venture called Landmarc Support Services Limited ('**Landmarc**'). Landmarc's primary business is managing and operating the UK's defence training estate on behalf of the Defence Infrastructure Organisation (part of the UK Ministry of Defence). Landmarc was not directly involved in the Relevant Tenders but was party to a number of contacts involving the Parties relating to the Parties' participation in the Relevant Tenders.²⁰

C The CMA's Investigation

Legal Framework

11. Section 2 of the Act prohibits agreements between undertakings, decisions of associations of undertakings, and concerted practices which may affect trade within the UK, and which have as their object or effect the prevention, restriction or distortion of competition within the UK (the '**Chapter I prohibition**').²¹ Broadly, the concept of an agreement centres around the existence of a concurrence of wills between at least two independent businesses²² and a concerted practice, while falling short of an agreement, arises where independent businesses knowingly substitute practical coordination for the risks of competition.²³
12. Conduct where a party withdraws from a tender pursuant to an agreement or concerted practice with another participant in that tender is a serious form of collusive tendering, sometimes referred to as '*bid-rigging*'.²⁴ Collusive tendering

¹⁷ [3<].

¹⁸ Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 2, paragraphs 4–5 and Witness Statement of [Senior R&S Employee], dated 26 September 2022, page 3, paragraphs 4–5.

¹⁹ Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 2, paragraph 6 and email between [PAE's Bid Consultant] and [a member of the PAE bid team], Subject: 'Monday morning catch up', dated 16 August 2021 9.47am (LOE-000000446).

²⁰ Landmarc's response of 31 March 2022 to the CMA's s.26 Notice dated 3 March 2022, pages 1 and 3.

²¹ The Chapter I prohibition also requires there to be an appreciable effect on competition within the UK, see, for example, Case 1124/1/1/09 North Midland Construction v OFT [2011] CAT 14, paragraphs 35–63.

²² See Case T-41/96 Bayer AG v Commission, EU:T:2000:242 paragraph 69. The form in which this concurrence of wills is manifested is not important, so long as it constitutes the faithful expression of the parties' intention (ibid).

²³ See Argos Limited v OFT [2005] CAT 13, paragraph 21.

²⁴ See for example, the CMA's 'Bid-rigging: advice for public sector procurers' (20 June 2016).

is a form of market sharing that is a well-established serious infringement of the Chapter I prohibition.²⁵

Reasonable grounds for suspecting an infringement

13. In order to launch an investigation using its formal powers under the Act, the CMA must have reasonable grounds for suspecting that there is or has been an infringement of competition law.²⁶
14. Based on information received from the HO (the '**s.25 Information**') the CMA determined that it had reasonable grounds for suspecting that PAE's withdrawal from the Relevant Tenders was attributable to an anti-competitive agreement or concerted practice between PAE and Mitie in breach of the Chapter I prohibition (the '**Suspected Conduct**'). In particular, the s.25 Information included two messages dated 22 September 2021 from PAE to the HO's procurement portal (the '**Withdrawal Messages**'). The Withdrawal Messages were materially the same and both stated that:

'PAE Corporate have identified a Conflict of Interest. The Incumbent Mitie is a JV partner with PAE in a Company called Landmarc and Mitie have requested PAE not to respond to this tender [...]'.

15. The Withdrawal Messages gave rise to a suspicion that PAE's decision to withdraw was not unilateral and was instead attributable to coordination with Mitie, notably that Mitie had '*requested*' that PAE withdraw.

Investigative steps

16. Having established that it had reasonable grounds for suspecting that there was an infringement of the Chapter I prohibition and applying the CMA's prioritisation principles,²⁷ the CMA launched the Investigation into the Suspected Conduct on 1 March 2022. The Investigation conducted by the CMA was extensive and involved gathering and carefully considering a substantial amount of evidence from the Parties and third parties, including extensive contemporaneous documentary as well as witness evidence. Most of this evidence was obtained through:

²⁵ Often referred to as 'by object' infringements. See, for example, *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, paragraph 224.

²⁶ Section 25 of the Act.

²⁷ Prioritisation principles for the CMA (CMA 16), April 2014.

- (a) An unannounced inspection of Mitie's premises at London Bridge, under the power of a warrant granted by the High Court and issued pursuant to section 28 of the Act.
 - (b) Document and information requests issued under section 26 of the Act to the Parties and third parties including to Landmarc.
 - (c) Voluntary witness evidence from a number of key former and current PAE employees involved in PAE's participation in the Relevant Tenders, including its decision to withdraw from them.
17. The Parties also voluntarily made written submissions to the CMA denying the Suspected Conduct and providing explanations for certain evidence.
18. Throughout the Investigation, the CMA also liaised with the HO, obtaining relevant documents and information in its possession.

D Assessment of the evidence

19. As described in paragraph 14 above, the Withdrawal Messages attributed PAE's withdrawal from the Relevant Tenders to a '*conflict of interest*' arising from Landmarc, and that Mitie had '*requested*' that PAE not respond to the Relevant Tenders. The CMA therefore focused the Investigation on establishing the nature of the relationship between the Parties including any contacts between the Parties and the reasons for PAE's withdrawal. The CMA therefore sought evidence:
- (a) On the terms of the contractual arrangements relating to Landmarc.
 - (b) On whether there were and, if so, the content of any direct or indirect contacts between Mitie and PAE relating to PAE's participation or otherwise in the Relevant Tenders.
 - (c) On the reasons for PAE's withdrawal from the Relevant Tenders.
 - (d) That might corroborate or cast doubt upon the veracity of the content of the Withdrawal Messages.
20. For the reasons set out below and taking into account the totality of the evidence obtained, in summary, the CMA:

- (a) Found no evidence of any restrictions in Landmarc's contractual arrangements on PAE bidding for the Relevant Tenders.²⁸
 - (b) Found evidence of several direct and indirect contacts between Mitie and PAE relating to the Relevant Tenders. However, those contacts did not indicate the existence of any request (explicit or implicit), pressure or incentive from Mitie to PAE in connection with PAE's participation or otherwise in the Relevant Tenders.²⁹
 - (c) Found substantial evidence that senior PAE executives and other personnel had consistently expressed extensive legitimate concerns about PAE's participation in the Relevant Tenders. The majority of these concerns were unconnected to PAE's business relationship with Mitie or Landmarc. The impact of PAE's participation in the Relevant Tenders on its relationship with Mitie was raised as a concern by some PAE individuals. However, the CMA has found no evidence that Mitie (directly or indirectly) expressed any concerns to PAE about the impact of PAE's participation in the Relevant Tenders on their business relationship. Rather, the evidence indicates that these concerns reflected the relevant PAE individuals' assumptions about how Mitie might respond to PAE participating in the Relevant Tenders.³⁰
 - (d) Found substantial evidence casting doubt on the veracity of the content of the Withdrawal Messages. Witness evidence from the two PAE individuals involved in the Withdrawal Messages confirmed that the Withdrawal Messages did not accurately reflect PAE's reasons for withdrawing from the Relevant Tenders and also provided plausible accounts as to why the Withdrawal Messages were incorrect.³¹
21. Therefore, the CMA has concluded that the balance of the evidence obtained indicates that PAE's decision to withdraw from the Relevant Tenders was unilateral and that the Suspected Conduct did not occur.
22. The reasons for the CMA's conclusion based on its assessment of the totality of the evidence obtained are set out in more detail below.

Landmarc contractual arrangements

23. The CMA reviewed Landmarc's contractual arrangements³² and found no provisions precluding or limiting the ability of either Mitie or PAE from

²⁸ See paragraph 23 below.

²⁹ See paragraphs 24–39 below.

³⁰ See paragraphs 40–51 below.

³¹ See paragraphs 52–60 below.

³² Specifically, the Landmarc Shareholders Agreement (as amended) and Articles of Association (as amended) provided as part of Landmarc's response of 31 March 2022 to the CMA's s.26 Notice dated 3 March 2022.

participating in the Relevant Tenders (or more generally in both competing for the same tenders). Both Mitie and PAE confirmed that they did not consider that they were subject to any contractual limitations on their ability to bid for the Relevant Tenders (or more generally).³³

Contacts between PAE and Mitie

24. In or around May 2021,³⁴ PAE became aware that Mitie was the incumbent operator at HIRC but, based on information provided by PAE's Bid Consultant,³⁵ was uncertain as to whether Mitie would be re-tendering. The PAE bid team sought to make contact with Mitie indirectly through Landmarc as the bid team lead did not consider at the time that PAE could bid for the Relevant Tenders without partnering with a company with relevant experience in the UK.³⁶ In the approach, PAE therefore raised the prospect of a joint bid for the Relevant Tenders with Mitie and/or Landmarc.³⁷
25. In response, Landmarc confirmed that Mitie was unlikely to want to give up the business '*in full or in part*' unless it was struggling to retain it. However, it agreed to raise PAE's inquiry with Mitie to see if there was an opportunity to partner.³⁸ The PAE bid team lead reiterated the possibility of a joint venture arrangement with Mitie, potentially using Landmarc as the joint vehicle, or alternatively some form of sub-contracting arrangement with Mitie.³⁹ In response, Landmarc promised to keep PAE updated on its '*discussions*'.⁴⁰
26. There was no further contact until mid-July 2021 when the PAE bid team followed up with Landmarc and was informed that Landmarc was expecting to hear back from Mitie to confirm whether it was re-bidding or had an interest in

³³ PAE's Voluntary Submission to the CMA, dated 22 June 2022, paragraph 52; Bravour's response of 5 May 2022 to the CMA's s.26 Notice dated 1 March 2022, question 9; and Mitie's Voluntary Submission to the CMA dated 27 June 2022, paragraph 17.

³⁴ Evidence indicates that in May 2021 the Senior R&S Employee approached PAE Senior Executive A to ascertain whether there would be any issue in PAE bidding given the relationship with Mitie through Landmarc. He responded that he did not consider that there would be an issue. Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, pages 18–21; Supplementary Witness Statement of [Senior R&S Employee], dated 5 December 2022, pages 5–6, paragraph 17.

³⁵ This uncertainty appears to have been based principally on an awareness of negative press coverage of Mitie's operations at HIRC and an incorrect assumption that Mitie did not formally attend certain tender briefings and site visits held by the HO. Witness Statement of [PAE bid team lead], dated 28 November 2022, page 10, paragraph 17 and email correspondence between [PAE Senior Executive A] and [PAE bid team lead], Subject: 'RE: IMC Operations (Heathrow) Bid', dated 23 August 2021 18:23 (LOE-000002658).

³⁶ Witness Statement of [PAE bid team lead], dated 28 November 2022, page 2, paragraph 5.

³⁷ Email correspondence between [Landmarc] and [PAE bid team lead], Cc: [PAE Senior Executive A], Subject: 'Re: Heathrow and Hassockfield Immigration Removal Centres', dated 14 June 2021 21:49 (LOE-000001459). This was by way of an email from the PAE bid team lead to Landmarc.

³⁸ Email correspondence between [Landmarc] and [PAE bid team lead], Cc: [PAE Senior Executive A], Subject: 'Re: Heathrow and Hassockfield Immigration Removal Centres', dated 14 June 2021 21:49 (LOE-000001459).

³⁹ Email correspondence between [Landmarc] and [PAE bid team lead], Cc: [PAE Senior Executive A], Subject: 'Re: Heathrow and Hassockfield Immigration Removal Centres', dated 14 June 2021 21:57 (LOE-000001463).

⁴⁰ Email correspondence between [Landmarc] and [PAE bid team lead], Cc: [PAE Senior Executive A], Subject: 'Re: Heathrow and Hassockfield Immigration Removal Centres', dated 14 June 2021 21:57 (LOE-000001463).

partnering with PAE.⁴¹ In light of the continued lack of response from Mitie, and significant concerns raised internally by senior PAE executives at PAE's involvement in the Relevant Tenders,⁴² the PAE bid team proposed to Landmarc on 20 July 2021 that PAE contact Mitie directly through an individual at Mitie with whom PAE was working on an unrelated matter and with whom the PAE bid team had raised, in conversation, the prospect of Mitie partnering with PAE.⁴³

27. Landmarc confirmed that it had no objections to the PAE bid team contacting Mitie directly but confirmed that Landmarc itself would not want a role partnering with PAE in relation to the Relevant Tenders.⁴⁴ The PAE bid team lead emailed his contact at Mitie, copying in Landmarc and another Mitie employee who had also worked with PAE on the same unrelated matter.⁴⁵ Neither Mitie individuals contacted directly by PAE work for MCC or were directly involved in the Relevant Tenders.⁴⁶
28. On 13 August 2021, having not heard back from Mitie or Landmarc, PAE's bid team lead sent Landmarc a set of slides setting out the PAE bid team's assessment of the Relevant Tenders, including their views on Mitie's past performance of the contracts based on press coverage.⁴⁷ Landmarc, the same day, forwarded the email, including the slides, to three consultants, noting that PAE had requested to know if they would be interested in supporting PAE's bid for the Relevant Tenders.⁴⁸ The PAE bid team had, in particular, identified that it would need additional UK based external assistance if it were to make a bid, [REDACTED].⁴⁹

⁴¹ Email correspondence between [PAE bid team lead] and [Landmarc], Cc: [PAE Senior Executive A], Subject: 'RE: Heathrow and Haddockfield Immigration Removal Centres', dated 13 July 2021 14:40 (LOE-000001588)

⁴² Mostly unconnected to PAE's relationship with Mitie or Landmarc - see further paragraphs 40–51 below.

⁴³ Witness Statement of [PAE bid team lead], dated 28 November 2022, page 5, paragraph 3.

⁴⁴ Email correspondence between [Landmarc] and [PAE bid team lead], Cc: [PAE Senior Executive A] and [REDACTED] (PAE), Subject: 'RE: Pre-Qualification Questionnaire Code 701434377-PQQ on Defence Sourcing Portal / Heathrow IRC – Immigration Removal Centres', dated 20 July 2021 20:04 (LOE-000001774).

⁴⁵ Email correspondence between [PAE bid team lead] and [REDACTED] (PAE), [REDACTED] (Mitie), Cc: [Landmarc]; [REDACTED] (Mitie) and [PAE Senior Executive A], Subject: 'RE: PQQ on Defence Sourcing Portal / Heathrow IRC – Immigration Removal Centres', dated 20 July 2021 20:15 (LOE-000001779); Witness Statement of [PAE bid team lead], dated 28 November 2022, page 5, paragraph 3 and Mitie's Voluntary Submission to the CMA, dated 27 June 2022, paragraph 33.

⁴⁶ Mitie's Voluntary Submission to the CMA, dated 27 June 2022, paragraph 34.

⁴⁷ Email correspondence between [PAE bid team lead] and [Landmarc], Subject: 'Heathrow', dated 13 August 2021 14:48 (LOE-000002207) and PAE MS3 presentation slides, dated 13 July 2021, attached to LOE-000002207 (LOE-000002208).

⁴⁸ Email correspondence between [Landmarc] and [Consultant B], [Consultant A], and [REDACTED], Subject: 'Fwd: Heathrow', dated 13 August 2021 17:29 (LOE-000243144). Landmarc's response of 31 March 2022 to the CMA's s.26 Notice dated 3 March 2022, also confirms that on or around 13 August 2021, Landmarc had a telephone discussion with PAE, in which PAE confirmed its interest in the HIRC tender and inquired as to whether Landmarc had any resources available that could support PAE's bid.

⁴⁹ Email correspondence between [Senior R&S Employee] and the PAE Bid Team, Cc: [PAE Senior Executive A], Subject: 'RE: Landmarc Update - Support Heathrow', dated 13 August 2021 19:26 (LOE-000002218).

29. On 20 August 2021, one of the consultants (**Consultant A**) confirmed to Landmarc that he was not interested in assisting PAE due to other business commitments and little knowledge of the sector.⁵⁰ The same day, another consultant (**Consultant B**),⁵¹ responded to Landmarc also declining the opportunity due to his other business commitments meaning that he would not want to be part of a team competing against Mitie, and also owing to a lack of experience of the sector.⁵² Landmarc forwarded Consultant B's email to a PAE senior executive (**PAE Senior Executive A**) and the PAE bid team lead.⁵³ The PAE bid team lead separately informed the PAE bid team that Landmarc had reported that neither Consultant A nor Consultant B would be available to assist PAE in its bid.⁵⁴ The PAE bid team lead mistakenly understood from communications with Landmarc that both consultants were assisting Mitie with its bid for the Relevant Tenders and informed the PAE bid team and, later, senior PAE executives of this.⁵⁵
30. Consultant B's email to Landmarc also explained that he had spoken to a contact at Mitie about the Relevant Tenders.⁵⁶ Consultant B stated that his Mitie contact had confirmed to him that Mitie would be re-bidding, that it was interested in exploring other joint opportunities but that Consultant B did not believe that such joint arrangements were possible or desired for the Relevant Tenders.⁵⁷
31. Consultant B's contact at Mitie then confirmed directly to Landmarc and Consultant B, that Consultant B's summary of their discussion was accurate and that he would pass on PAE's interest in extending PAE and Mitie's relationship to two individuals within Mitie, at least one of whom was interested in extending the business relationship with PAE.⁵⁸ Neither of these individuals worked for MCC or had any direct involvement in the Relevant Tenders. After Consultant

⁵⁰ Email correspondence from [Consultant A] to [Landmarc], Subject: 'Re: Heathrow', dated 20 August 2021 13:43 (LOE-000243147).

⁵¹ The CMA has found no evidence that the third consultant responded to the approach by Landmarc.

⁵² Email correspondence between [Consultant B] and [Landmarc], Cc: [Consultant B's contact at Mitie], Subject: '[EXTERNAL] IMC Operations', dated 20 August 2021 12:05 (LOE-000242953).

⁵³ Email correspondence between [Landmarc] and [PAE Senior Executive A] and [PAE bid team lead], Subject: 'FW: IMC Operations', dated 20 August 2021 12:40 (LOE-000002395).

⁵⁴ Email correspondence between [PAE bid team lead] and PAE Bid Team, Subject: 'RE: Updated Heathrow Conops and PMO', dated 20 August 2021 14:11 (LOE-000002411).

⁵⁵ Email correspondence between [PAE bid team lead] and PAE Bid Team, Subject: 'RE: Updated Heathrow Conops and PMO', dated 20 August 2021 14:11 (LOE-000002411); Email correspondence between [PAE bid team lead] and other PAE individuals, Subject: 'Heathrow Immigration MS3 NO BID Recommendation', dated 23 August 2021 16:04 (LOE-000002620); Mitie's response of 17 September 2022 to the CMA's s.26 Notice dated 10 August 2022; Email correspondence between [Consultant A] and [Landmarc], Subject: 'Re: Heathrow', dated 20 August 2021 13:43 (LOE-000243147) and Witness Statement of [PAE bid team lead], dated 28 November 2022, page 6, paragraph 7.

⁵⁶ Who was not directly involved in the Relevant Tenders or the MCC business.

⁵⁷ Email correspondence between [Consultant B] and [Landmarc], Cc: [Consultant B's contact at Mitie], Subject: '[EXTERNAL] IMC Operations', dated 20 August 2021 12:05 (LOE-000242953).

⁵⁸ Email correspondence between [Consultant B's contact at Mitie] and [Consultant B] and [Landmarc], Subject: 'IMC Operations', dated 20 August 2021 12:48 (LOE-000242954).

B's contact at Mitie sent the summary of his discussion to the two individuals, Landmarc forwarded their response to PAE.⁵⁹ Whilst the CMA has seen evidence of subsequent contacts between Mitie and PAE in relation to future business opportunities arising from these exchanges, the evidence did not indicate that such opportunities were connected to PAE's withdrawal from the Relevant Tenders.

32. On 23 August 2021, the same day senior PAE executives confirmed that PAE should not proceed further with the Relevant Tenders,⁶⁰ PAE Senior Executive A informed Consultant B's Mitie contact and one of the Mitie business leads (referred to in paragraph 31 above) that PAE was no longer going to pursue the Relevant Tenders. In that email, PAE explained that it had previously understood that Mitie would not be re-tendering but indicated that having received confirmation that Mitie was bidding, PAE had decided not to bid. The email also apologised for what it described as '*the misfire*'. It is not clear from the text of the email what this refers to.⁶¹
33. The CMA interviewed the senior PAE executive who sent this email. He explained that in the context of the relationship with Mitie through Landmarc, and the approaches that had been made as described in paragraphs 24 to 31 above, he considered that it was the natural thing to do to inform Mitie that PAE was no longer pursuing the Relevant Tenders.⁶² The relevance of Mitie confirming that it was bidding to PAE's decision to withdraw was a general one – if an incumbent was not re-tendering this would generally make it easier to win a tender and conversely, if the incumbent is re-tendering, much harder for a new entrant to secure the contract.⁶³ He also explained that the PAE bid team had approached former Mitie executives (in addition to the external consultants referred to at paragraphs 28 and 29 above) to enlist their support for PAE's bid. He did not feel comfortable in approaching former executives in circumstances where an incumbent was re-bidding, hence in his view '*the misfire*' by PAE.⁶⁴

⁵⁹ Email correspondence between [Landmarc], [PAE Senior Executive A] and [PAE bid team lead], Subject 'Fw: IMC Operations', dated 20 August 2021 13:40 (LOE-000002399).

⁶⁰ See paragraph 47 below.

⁶¹ Email correspondence between [PAE Senior Executive A] and [Consultant B's contact at Mitie] and [One of the Mitie business leads], Cc: [Consultant B]; [PAE bid team lead] and [Landmarc], Subject: 'IMC Operations (Heathrow) Bid', dated 23 August 2021 16:30 (LOE-000002636).

⁶² Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, page 17.

⁶³ Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, pages 17–20. The PAE bid team lead also confirmed that this was the relevance of the confirmation from Mitie confirming it was re-bidding. See Witness Statement of [PAE bid team lead], dated 28 November 2022, page 10, paragraph 18. See further paragraphs 40–51 below.

⁶⁴ Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, page 21. The PAE bid team lead also confirmed that he believed '*the misfire*' referred to PAE's attempt to engage an external consultant already contracted by Mitie. See Witness Statement of [PAE bid team lead], dated 28 November 2022, page 10, paragraph 19.

34. Mitie responded the same day thanking PAE for its email but noting only that it would be interested in any insight PAE may have obtained regarding Mitie's performance under its existing contracts.⁶⁵ PAE responded that it would do so⁶⁶ but the CMA has found no evidence that PAE provided such information and the PAE bid team lead confirmed that he did not follow up.⁶⁷
35. The CMA found no evidence of further contacts between PAE and Mitie relating to the Relevant Tenders. Apart from the contacts referenced above, the CMA found evidence of contacts between the Parties concerning business development opportunities or related to the operation of Landmarc. The documentary evidence shows that these contacts preceded PAE's interest in the Relevant Tenders,⁶⁸ continued past PAE's decision to withdraw from the Relevant Tenders⁶⁹ and the CMA has not found any evidence to link such contacts to PAE's participation or otherwise in the Relevant Tenders.
36. In addition, contemporaneous documents obtained from Mitie also show that in the summer of 2021, Mitie was reviewing its growth strategy, at that time, and had identified the relationship with PAE as an avenue to explore further.⁷⁰ This prompted Consultant B's Mitie contact to suggest that Mitie was open to exploring other opportunities with PAE when the possibility of joint venture arrangements on the Relevant Tenders with PAE was raised by Consultant B.⁷¹
37. Witness evidence provided by members of the PAE bid team and PAE Senior Executive A confirmed that they were not aware of any request from Mitie or other coordination in relation to PAE's decision to withdraw from the Relevant Tenders.⁷² Their evidence is consistent with the contemporaneous documentary evidence and provides plausible legitimate explanations for the contacts between Mitie and PAE.

⁶⁵ Email correspondence between [Consultant B's contact at Mitie] and [PAE Senior Executive A], Cc: [Consultant B]; [PAE bid team lead]; [Landmarc]; [One of the Mitie business leads] and [X] (Mitie), Subject: 'IMC Operations (Heathrow) Bid', dated 23 August 2021 17:47 (LOE-000025885).

⁶⁶ Email correspondence between [PAE bid team lead] and [Consultant B's contact at Mitie], Cc: [PAE Senior Executive A], Subject: 'RE: IMC Operations (Heathrow) Bid', dated 23 August 2021 19:22 (LOE-000002661).

⁶⁷ See Witness Statement of [PAE bid team lead], dated 28 November 2022, page 11, paragraph 21; Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, page 23–25.

⁶⁸ Email correspondence between [Landmarc] and [PAE Senior Executive A], Subject: 'Mitie Call – [X] & [X]', dated 16 February 2021 21:37 (LOE-000001126).

⁶⁹ Email correspondence between [X] (Mitie) and [PAE Senior Executive A], Cc: [Landmarc], Subject: 'Landmarc', dated 8 December 2021 12:06 (LOE-000010550) and Telephone chat messages between [Landmarc] and [PAE Senior Executive A], dated 21 December 2021 (LOE-000003972).

⁷⁰ Email correspondence between [X] (Mitie), [X] (Mitie), Cc: [X] (Mitie), Subject: 'Re:', dated 19 August 2021 15:29 (LOE-000007774).

⁷¹ Email correspondence between [Consultant B's contact at Mitie] and [X] (Mitie), Subject: 'RE: IMC Operations (PAE)', dated 20 August 2021 18:48 (LOE- 000242959).

⁷² See Witness Statement of [PAE bid team lead], dated 28 November 2022, page 1, paragraph 1; Witness Statement of [Senior R&S Employee], dated 26 September 2022, page 1, paragraph 2; Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, page 54 and Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 1, paragraph 1.

38. The CMA cannot exclude the possibility of other contacts existing between PAE and Mitie in which a request could have been made, pressure exerted, or incentives offered (whether expressly or impliedly) by Mitie to PAE to withdraw or that otherwise support the existence of the Suspected Conduct. Cartels are inherently secret, and businesses will often go to great lengths to conceal their existence.⁷³
39. In light of this, the CMA has therefore also considered all the evidence obtained as to: (i) the reasons for PAE's decision to withdraw from the Relevant Tenders; and, whether (ii) there is evidence that corroborates, or casts doubt, on the content of the Withdrawal Messages as to the reasons given for PAE's withdrawal from the Relevant Tenders. The CMA's assessment of such evidence is set out below.

Reasons for PAE's withdrawal

40. Formal approval from PAE senior management was required to proceed with the Relevant Tenders.⁷⁴ Consequently, on 19 July 2021, the PAE bid team first sought approval and budget from PAE senior executives,⁷⁵ for R&S to pursue the Relevant Tenders.⁷⁶ PAE's senior executives expressed significant reservations about pursuing the Relevant Tenders. The majority of reasons cited in the contemporaneous documents are unrelated to Mitie or Landmarc and include: [PAE's experience, perceived risks and PAE's strategy].⁷⁷ Senior PAE executives also considered that Landmarc would not have the capacity to be involved as it was in the middle of re-tendering for its primary contract with the Ministry of Defence, but that if Mitie was willing to partner with PAE then it might be possible to proceed.⁷⁸

⁷³ See, for example, *JJB Sports plc v OFT* [2004] CAT 17, paragraph 206.

⁷⁴ Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 4, paragraph 12 and Witness Statement of [Senior R&S Employee], dated 26 September 2022, page 4, paragraph 11.

⁷⁵ These included the Interim President of PAE's Global Missions Services business and Chief Financial Officer, the Vice President of PAE's Business Development function, and the Vice President of PAE's Aviation Capture division, amongst others.

⁷⁶ Email correspondence between [PAE bid team lead] and the PAE senior executives and other PAE individuals, Subject: 'MS-3 Heathrow (GMS)', dated 19 July 2021 19:40 (LOE-000001653).

⁷⁷ Email correspondence between [one of the PAE senior executives] and [PAE bid team lead] and [Senior R&S Employee], Cc: other PAE individuals, Subject: 'RE: MS-3 Heathrow (GMS)' dated 19 July 2021 20:46 (LOE-000001688); Email correspondence between [one of the PAE senior executives] and [one of the PAE senior executives]; [PAE bid team lead] and [Senior R&S Employee] Cc: [one of the PAE senior executives], Subject: 'Re: MS-3 Heathrow (GMS)', dated 19 July 2021 21:00 (LOE-000001701); and email correspondence between [one of the PAE senior executives] and [one of the PAE senior executives]; [PAE bid team lead] and [Senior R&S Employee]; Cc: [one of the PAE senior executives], dated 19 July 2021 21:55 (LOE-000001709).

⁷⁸ Email correspondence between [one of the PAE senior executives] and [PAE bid team lead] and [Senior R&S Employee], Cc: other PAE individuals, Subject: 'RE: MS-3 Heathrow (GMS)' dated 19 July 2021 20:46 (LOE-000001688); and email correspondence between [PAE Senior Executive A] (PAE) and [PAE bid team lead] (PAE), Cc: [one of the PAE senior executives] (PAE) and [one of the PAE senior executives] (PAE), Subject: 'RE: MS-3 Heathrow (GMS)', dated 19 July 2021 19:54 (LOE-000001673).

41. Concerns were also raised by PAE Senior Executive A, as to the terms of the Landmarc contracts and Mitie's potential reaction, as well as suggesting that PAE contact Mitie executives.⁷⁹
42. Given this initial response from senior executives, the PAE bid team withdrew the bid proposal, intending to revert with a stronger proposal that would address the concerns raised by senior PAE executives.⁸⁰ On 28 and 31 July 2021, various internal PAE exchanges evidence disagreement between members of the PAE bid team as to whether PAE should pursue the Relevant Tenders.⁸¹
43. In particular, the PAE bid team lead informed other members of the PAE bid team and a number of senior PAE executives that he was against PAE pursuing the Relevant Tenders. He set out a number of reasons unconnected to Mitie or Landmarc for his view, similar to those raised by senior PAE executives. He also noted that Mitie had not responded to PAE's enquiries about a joint strategy and that Landmarc was not interested in being involved.⁸² In response, the Senior R&S Employee circulated an initial draft '*pros and cons*' of participating in the Relevant Tenders⁸³ which contained no reference to any concerns relating to Mitie or Landmarc and confirmed that the PAE bid team should continue to work on the Relevant Tenders to determine whether it was possible to address the concerns identified by senior PAE executives.⁸⁴
44. The PAE Bid Consultant attended a site visit in early August 2021 and the PAE bid team continued to work on the Relevant Tenders including submitting the

⁷⁹ Email correspondence between [PAE Senior Executive A] and [PAE bid team lead], Cc: [one of the PAE senior executives] and [one of the PAE senior executives], Subject: 'RE: MS-3 Heathrow (GMS)', dated 19 July 2021 19:54 (LOE-000001673) and email correspondence between [PAE Senior Executive A] and [PAE bid team lead], Subject: 'RE: MS-3 Heathrow (GMS)', dated 19 July 2021; 19:40, (LOE-000001705). As set out at paragraph 23, there are no provisions in the Landmarc joint venture contractual arrangements precluding or otherwise limiting PAE from participating in the Relevant Tenders.

⁸⁰ Email correspondence between [PAE bid team lead] and PAE senior executives, Subject: 'RE: MS-3 Heathrow (GMS)', dated 19 July 2021 23:41 (LOE-000001734).

⁸¹ Email correspondence between [PAE bid team lead] and [one of the PAE senior executives], Cc: [one of the PAE senior executives], Subject: 'FW: Heathrow IRC', dated 28 July 2021 20:39 (LOE-000001878); Email correspondence between [PAE bid team lead] and [Senior R&S Employee], Cc: [PAE's Bid Consultant]; [a member of the PAE bid team] and [one of the PAE senior executives], Subject: 'Re: Heathrow IRC', dated 31 July 2021 17:07 (LOE-000001919) and email correspondence between [a member of the PAE bid team] and [Senior R&S Employee]; [PAE bid team lead], Cc: [PAE's Bid Consultant], Subject: 'FW: RE: Heathrow IRC', dated 31 July 2021 17:13 (LOE-000001922).

⁸² Email correspondence between [PAE bid team lead] and [Senior R&S Employee], Cc: [PAE's Bid Consultant]; [a member of the PAE bid team] and [one of the PAE senior executives], Subject: 'RE: Heathrow IRC', dated 31 July 2021 16:08 (LOE-000001913) and Witness Statement of [PAE bid team lead], dated 28 November 2022, page 3, paragraphs 8–11.

⁸³ Email correspondence between [Senior R&S Employee] and [PAE bid team lead]; [one of the PAE senior executives], Cc: [PAE's Bid Consultant] and [a member of the PAE bid team], Subject: 'Heathrow IRC', dated 31 July 2021 18:16 (LOE-000001927) and Presentation slides, 'Heathrow Detention Centre Pursuit_pros-cons_31July2021.pptx', attached to LOE-000001927 (LOE-000001928).

⁸⁴ Witness Statement of [PAE bid team lead], dated 28 November 2022, page 3, paragraph 11; Supplementary Witness Statement of [Senior R&S Employee], dated 5 December 2022, page 3, paragraph 11; Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 3, paragraph 10 and email correspondence between [Senior R&S Employee] and [PAE bid team lead], Cc: [PAE's Bid Consultant]; [a member of the PAE bid team] and [one of the PAE senior executives], Subject: 'RE: Heathrow IRC', dated 31 July 2022 16:45 (LOE-000001918).

selection questionnaire to the HO on 20 August 2021, as required to progress in the Relevant Tenders.⁸⁵ However, during August 2021, additional concerns were expressed within PAE, about PAE's participation in the Relevant Tenders unrelated to Mitie or Landmarc.⁸⁶ A call was held on 19 August 2021 prompted by several senior PAE executives being required to input into the selection questionnaire for the Relevant Tenders to be submitted on 20 August 2021. On the call the relevant senior PAE executives reiterated to members of the PAE bid team their extensive concerns unrelated to Mitie or Landmarc that they had with the Relevant Tenders and that senior PAE executives were not therefore going to support PAE's participation in the Relevant Tenders.⁸⁷ An internal meeting was already scheduled for 23 August 2021 with senior PAE executives to confirm whether PAE should pursue the Relevant Tenders.⁸⁸

45. As described at paragraphs 29 and 30 above, on 20 August 2021 shortly before the 23 August 2021 meeting, PAE received confirmation from Consultant B via Landmarc that Mitie was re-bidding, that it did not wish to bid jointly and that the two external consultants PAE hoped to recruit to assist in preparing its bid (including Consultant B)⁸⁹ were unavailable. PAE also mistakenly believed that the two consultants that had been approached to assist PAE were working for Mitie on its bid for the Relevant Tenders.⁹⁰ The evidence suggests that the information received on 20 August 2021 from Consultant B via Landmarc was viewed by various PAE individuals as impacting PAE's prospects of participating in the Relevant Tenders in different ways as follows:

- (a) The unavailability of the two consultants was viewed by members of the PAE bid team as a significant obstacle in their efforts to overcome senior

⁸⁵ Email correspondence between [PAE's Bid Consultant] and [a member of the PAE bid team], Subject: 'Heathrow SQ submission', dated 20 August 2021 06:05 (LOE-000002393); Excel Spreadsheet '20022021answerTo_pqq_142 (1).xlsx', attached to LOE-000002393 (LOE-000002394) and Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 3, paragraph 10.

⁸⁶ Email correspondence between [one of the PAE senior executives] and [§<] (PAE) and [PAE bid team lead], Cc: [a member of the PAE bid team] and [Senior R&S Employee], Subject: 'RE: Heathrow IRC SQ call 1.3.21 1.3.22', dated 19 August 2021 14:19 (LOE-000002372) and email correspondence between [a member of the PAE bid team] and [Senior R&S Employee], Subject: 'Fwd: UK Heathrow effort', dated 17 August 2021 22:52 (LOE-000002332).

⁸⁷ Email correspondence between [one of the PAE senior executives] and [§<] (PAE) and [PAE bid team lead], Cc: [a member of the PAE bid team] and [Senior R&S Employee], Subject: 'RE: Heathrow IRC SQ call 1.3.21 1.3.22', dated 19 August 2021 14:19 (LOE-000002372); Email correspondence between [one of the PAE senior executives] and [Senior R&S Employee], [§<] (PAE) and [PAE bid team lead], Cc: [a member of the PAE bid team], Subject: 'RE: Heathrow IRC SQ call 1.3.21 1.3.22', dated 19 August 2021 14:36 (LOE-000002382); Witness Statement of [Senior R&S Employee], dated 26 September 2022, pages 4–5, paragraph 14 and Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 5, paragraph 14.

⁸⁸ Email correspondence between [PAE bid team lead] and [one of the PAE senior executives], Cc: [one of the PAE senior executives], Subject: 'RE: Heathrow Immigration MS-3 CUB Pre-Brief', dated 23 August 2021 14:50 (LOE-000002604).

⁸⁹ Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, page 30.

⁹⁰ See paragraph 29 above; Email correspondence between [PAE bid team lead] and [a member of the PAE bid team] and [Senior R&S Employee], Cc: [PAE's Bid Consultant], Subject: 'RE: Updated Heathrow Conops and PMO', dated 20 August 2021 14:11 (LOE-000002408).

PAE executives concerns with the bid unconnected to Mitie or Landmarc [REDACTED].⁹¹

- (b) The mistaken belief that the two consultants were retained by Mitie on the Relevant Tenders was interpreted by some members of the PAE bid team as a signal that Mitie intended to compete aggressively for the Relevant Tenders and/or that Mitie did not want PAE to bid for the Relevant Tenders.⁹² This also fed into concerns expressed by some individuals at the potential impact on the relationship with Mitie at a time when Landmarc was at a critical point in the re-compete of its contract and in light of Mitie's offer to explore other business opportunities with PAE.⁹³
- (c) The fact that as an incumbent, Mitie, had confirmed it was re-tendering and did not want to partner was also viewed as materially impacting PAE's prospects in the Relevant Tenders.⁹⁴

46. On 22 August 2021, the Senior R&S Employee circulated a risk assessment (the '**risk assessment**') for PAE's pursuit of the Relevant Tenders amongst the PAE bid team.⁹⁵ This document was then included in a presentation on the Relevant Tenders sent to senior PAE executives the next day by the PAE bid team lead as part of the no-bid recommendation.⁹⁶ The risk assessment considered '*Landmarc JV Alignment*' to be the only '*High Risk*' factor for PAE participating in the Relevant Tenders, noting that PAE '*need both legal and relationship concurrence*' but that '*Mitie and Landmarc are aggressively protecting their incumbent position*' and that PAE understood '*JV parent Mitie is*

⁹¹ Email correspondence between [PAE bid team lead] and [a member of the PAE bid team] and [Senior R&S Employee], Cc: [PAE's Bid Consultant], Subject: 'RE: Updated Heathrow Conops and PMO', dated 20 August 2021 14:11 (LOE-000002408); Witness Statement of [Senior R&S Employee], dated 26 September 2022, page 4, paragraphs 12–13; Supplementary Witness Statement of [Senior R&S Employee], dated 5 December 2022, page 2, paragraph 7 and Witness Statement of [PAE bid team lead], dated 28 November 2022, page 4, paragraph 13.

⁹² Email correspondence between [Senior R&S Employee] and [one of the PAE senior executives], Subject: 'RE: Heathrow Bid', dated 22 August 2021 14:45 (LOE-000002510); Email between [PAE bid team lead] and other PAE individuals, Cc: [PAE Senior Executive A], Subject: 'Heathrow Immigration MS3 NO BID Recommendation', dated 23 August 2021 16:04 (LOE-000002620); Witness Statement of [Senior R&S Employee], dated 26 September 2022, page 4, paragraph 12 and Supplementary Witness Statement of [Senior R&S Employee] dated 5 December 2022, page 6, paragraph 18.

⁹³ Email correspondence between [PAE Senior Executive A] and [one of the PAE senior executives] and [PAE bid team lead], Cc: [one of the PAE senior executives], Subject: 'FW: IMC Operations (PAE)', dated 22 August 2021 13:55 (LOE-000002505) and Witness Statement of [PAE bid team lead], dated 28 November 2022, page 4, paragraphs 12–13.

⁹⁴ 'Heathrow Risk assessment-draft', attached to LOE-000002521 (LOE-000002522); Witness Statement of [a member of the PAE bid team], dated 14 November 2022, page 8, paragraph 26; Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, pages 18 and 20 and Witness Statement of [PAE bid team lead], dated 28 November 2022, page 9, paragraph 14.

⁹⁵ Email correspondence between [Senior R&S Employee] and [PAE bid team lead], [a member of the PAE bid team] and [PAE's Bid Consultant], Subject: 'PLEASE REVIEW AND EDIT: [REDACTED]_PAE MS3 Heathrow_13Aug2021_[REDACTED].pptx', dated 22 August 2021 16:29 (LOE-000002521) and 'Heathrow Risk assessment-draft', attached to LOE-000002521 (LOE-000002522).

⁹⁶ See paragraph 47 below.

concerned with the relationship'.⁹⁷ However, both the PAE bid team lead and PAE Senior Executive A, confirmed that they either did not comment on or read the risk assessment at the time of receipt as the decision had already effectively been taken by senior PAE executives on 19 August 2021 not to pursue the Relevant Tenders⁹⁸ for reasons unconnected to Mitie or Landmarc.⁹⁹

47. On 23 August 2021, the PAE bid team lead, as a matter of formality, sent a recommendation to senior PAE executives that PAE should not submit a bid in response to the Relevant Tenders (the '**no-bid recommendation**') endorsed by the Senior R&S Employee.¹⁰⁰ PAE senior management agreed with the no-bid recommendation with no discussion.¹⁰¹ The no-bid recommendation set out a number of reasons for PAE withdrawing from the Relevant Tenders. These included extensive concerns that were unrelated to Mitie or Landmarc, including those highlighted at paragraph 40 above. The PAE bid team lead also stated he was not in favour of bidding against Mitie as PAE's Landmarc joint venture partner and that he considered that bidding could potentially have a significant impact on PAE's relationship with Mitie.¹⁰²
48. As described above, the evidence shows that PAE had a number of legitimate reasons for its decision to withdraw from the Relevant Tenders that were unrelated to its relationship with Mitie or Landmarc. These concerns were consistently raised by senior PAE executives and, prior to the confirmation on 20 August 2021 from Mitie that it was bidding and did not want to partner, as described at paragraph 44 above, several senior PAE executives confirmed to the PAE bid team that senior PAE executives would not approve a bid.

⁹⁷ Email correspondence between [Senior R&S Employee] and [PAE bid team lead], [a member of the PAE bid team] and [PAE's Bid Consultant], Subject: 'PLEASE REVIEW AND EDIT: [REDACTED]_PAE MS3 Heathrow_13Aug2021_[REDACTED].pptx', dated 22 August 2021 16:29 (LOE-000002521) and 'Heathrow Risk assessment-draft', attached to LOE-000002521 (LOE-000002522).

⁹⁸ Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, page 32; and Witness Statement of [PAE bid team lead], dated 28 November 2022, page 7, paragraphs 11 and 12. The latter also confirmed that he did not completely understand the risk assessment produced by the Senior R&S Employee as, in his view, it was vaguely worded and partly inaccurate. He further explained that he included it in the presentation pack to senior PAE executives as a technicality given the no-bid decision had already been effectively made and to ensure that the Senior R&S Employee felt that her views were taken into account.

⁹⁹ Witness Statement of [PAE bid team lead], dated 28 November 2022, page 4, paragraphs 11–13.

¹⁰⁰ Email correspondence between [PAE bid team lead] and other PAE individuals, Cc: [PAE Senior Executive A], Subject: 'Heathrow Immigration MS3 NO BID Recommendation', dated 23 August 2021 16:04 (LOE-000002620) and email correspondence between [Senior R&S Employee] and [PAE bid team lead] and other PAE individuals, Cc: [PAE Senior Executive A], Subject: 'RE: Heathrow Immigration MS3 NO BID Recommendation', dated 23 August 2021 18:04 (LOE-000002648).

¹⁰¹ Email correspondence between [one of the PAE senior executives] and [PAE bid team lead] and other PAE individuals, Cc: [PAE Senior Executive A], Subject: 'Re: Heathrow Immigration MS3 NO BID Recommendation', dated 23 August 2021 16:22 (LOE-000002634); Email correspondence between [PAE bid team lead] and [REDACTED] (PAE), Subject: 'Re: Heathrow Immigration MS3 NO BID Recommendation', dated 23 August 2021 17:09 (LOE-000002645) and email correspondence between [one of the PAE senior executives] and [one of the PAE senior executives] and [PAE bid team lead], Subject: 'Re: Heathrow Immigration MS3 NO BID Recommendation', dated 23 August 2021 16:13 (LOE-000002629).

¹⁰² Email between [PAE bid team lead] and other PAE individuals, Cc: [PAE Senior Executive A], Subject: 'Heathrow Immigration MS3 NO BID Recommendation', dated 23 August 2021 16:04 (LOE-000002620).

49. The evidence also shows that there were some individuals within PAE who had concerns over the potential impact of PAE's participation in the Relevant Tenders on PAE's business relationship with Mitie. Such concerns were amplified for some individuals by the information received from Consultant B on 20 August 2021. PAE witness evidence suggested that individuals in the PAE bid team in particular focused on these developments in internal exchanges leading up to and on 23 August 2021 in order to explain or 'save face' with senior PAE executives for pursuing the Relevant Tenders to that stage, notwithstanding the significant reservations consistently raised by senior PAE executives in July and August 2021 unconnected to Mitie or Landmarc.¹⁰³
50. Significantly, however, there is nothing to suggest in the evidence the CMA has seen, that these concerns about the impact on PAE's relationship with Mitie resulted from anything other than PAE's own assessment of the situation. Moreover, the documentary evidence supported by witness evidence clearly indicates that senior PAE executives' strong and consistent opposition to participation in the Relevant Tenders were not driven by PAE's business relationship with Mitie or Landmarc.
51. The CMA therefore concludes that, taking account of the totality of the evidence, PAE's decision to withdraw from the Relevant Tenders was motivated by a range of legitimate and unilateral concerns. Whilst concerns were raised regarding the impact that bidding might have on PAE's relationship with Mitie, the evidence indicates that these concerns were unilateral and arose from PAE's own assessment of the situation.

The Withdrawal Messages

52. PAE did not notify the HO of its decision to withdraw from the Relevant Tenders until after it received the results of the selection questionnaire that it had progressed to the next stage of the Relevant Tenders. Witness evidence explained that the Senior R&S Employee and the PAE Bid Consultant decided that if PAE had not progressed, PAE would not have needed to inform the HO of PAE's decision to withdraw, which the Senior R&S Employee considered could negatively impact on PAE's future relationship with the HO.¹⁰⁴
53. As described at paragraph 14 above, the Withdrawal Messages submitted on 22 September 2021 referred to Mitie having '*requested*' that PAE not pursue the Relevant Tenders and to a '*conflict of interest*' arising from Landmarc. As set out at paragraphs 24 to 39 above, the CMA has not found evidence of contacts to

¹⁰³ Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, pages 27, 28 and 31.

¹⁰⁴ Witness Statement of [a member of the PAE bid team], dated 14 November 2022, pages 8–9, paragraph 26 and Witness Statement of [Senior R&S Employee] dated 26 September 2022, page 5, paragraph 15.

corroborate the suspicion that there was any request by Mitie that PAE should withdraw. In addition, as set out at paragraph 23 above, the CMA has found no evidence of any contractual provision relating to Landmarc that could be interpreted as giving rise to a '*conflict of interest*', and both Mitie and PAE have confirmed this. Moreover, as set out in paragraphs 40 to 51 above, the CMA has also found substantial evidence that PAE had a number of legitimate reasons for its decision to withdraw from the Relevant Tenders, unconnected to Mitie or Landmarc, and that the concerns expressed by some individuals with regard to any potential impact on PAE's business relationship with Mitie of participating in the Relevant Tenders reflected those individuals' unilateral appreciation of the situation.

54. PAE submitted to the CMA that the Withdrawal Messages were incorrect in stating that there had been a request or a '*conflict of interest*' arising from Landmarc. PAE submitted that, other than two members of the PAE bid team and the PAE Bid Consultant, no individuals at PAE saw or were involved in the preparation or submission of the Withdrawal Messages to the HO.¹⁰⁵ This was confirmed by witness evidence from several PAE individuals.¹⁰⁶
55. The evidence shows that PAE's Bid Consultant drafted and then submitted the first Withdrawal Message on 22 September 2021 to the HO's portal but was informed by the HO that it needed to be re-submitted to a different part of the HO's portal.¹⁰⁷ Another member of the PAE bid team advised him to send the draft to the Senior R&S Employee as well as himself for approval, which he did without explaining that it had already been submitted to the HO, albeit incorrectly.¹⁰⁸ The Senior R&S Employee suggested some minor changes but did not amend or question the reasons given for PAE's withdrawal including the reference to Mitie requesting that PAE withdraw. The PAE Bid Consultant submitted the second amended Withdrawal Message to the HO's portal but correctly this time.¹⁰⁹
56. The Senior R&S Employee confirmed that she reviewed and edited the first Withdrawal Message prepared by PAE's Bid Consultant and that none of the

¹⁰⁵ PAE's Voluntary Submission to the CMA, dated 22 June 2022, paragraph 21.

¹⁰⁶ Supplementary Witness Statement of [Senior R&S Employee] dated 5 December 2022, pages 6–7, paragraph 20; Witness Statement of [a member of the PAE bid team], dated 14 November 2022, pages 8–9, paragraph 26; Witness Statement of [PAE bid team lead], dated 28 November 2022, page 11, paragraph 24 and Interview Transcript of [PAE Senior Executive A], dated 1 November 2022, page 50.

¹⁰⁷ Jaggaer message to PAE with subject 'PAE Withdrawal from Lot 1 & Lot 2 Procurements', dated 22 September 2021.

¹⁰⁸ Email correspondence between [PAE's Bid Consultant] and [Senior R&S Employee], Cc: [a member of the PAE bid team], Subject: 'Heathrow "no-bid" notification', dated 22 September 2021 12:19 (LOE-000003052).

¹⁰⁹ Email correspondence between [PAE's Bid Consultant] and [Senior R&S Employee], Cc: [a member of the PAE bid team], Subject: 'RE: Heathrow "no-bid" notification', dated 22 September 2021 13:30 (LOE-000003058); Email to IRCs Commercial with subject 'A Supplier Declined to Respond to ITT - Invitation to Tender Code itt_362 on Home Office', dated 22 September 2021; and email to IRCs Commercial with subject 'A Supplier Declined to Respond to ITT - Invitation to Tender Code itt_400 on Home Office' dated 22 September 2021.

PAE senior executives '*had sight of*' or '*were involved in*' preparing the Withdrawal Messages.¹¹⁰ She confirmed that she had not been told by anyone at PAE of any request from Mitie for PAE not to pursue the Relevant Tenders, nor had she engaged in any conversations with Mitie concerning the Relevant Tenders.¹¹¹ While she had assumed that Mitie did not want PAE to bid for the Relevant Tenders, this was not based on any specific information she received but was instead '*based on [her] general thought that usually no company wants to see another company up against it for a contract*'.¹¹² In relation to the reasons set out in the Withdrawal Messages for PAE's withdrawal, she explained that, '*despite...knowing at the time*' that the reasons were incorrect, she approved the inclusion of these incorrect reasons because she thought this would be a '*better approach*' than telling the HO the '*real reason*' for PAE's withdrawal, specifically, that [PAE's experience, perceived risks and PAE's strategy].¹¹³

57. The other member of the PAE bid team who saw the first Withdrawal Message stated that he did not think that the reasons given for PAE's decision to withdraw were correct, and he knew that competing against Mitie '*was not an impediment to pursuing a bid*'.¹¹⁴ However, he believed that the wording of the Withdrawal Messages was intended to preserve PAE's relationship with the HO by not highlighting to the HO the real reasons for PAE's withdrawal, [PAE's experience]. He did not challenge the drafting of the Withdrawal Messages at the relevant time as he reported to the Senior R&S Employee who had approved the draft and no one else at PAE would see the Withdrawal Messages on the HO's portal.¹¹⁵
58. In addition, the subsequent conduct by the PAE bid team casts further doubt on the veracity of the Withdrawal Messages. Concerned by the reasons given by PAE in the Withdrawal Messages, the HO requested clarification from PAE and Mitie on 24 and 30 September respectively. Mitie replied on 6 October 2021

¹¹⁰ Supplementary Witness Statement of [Senior R&S Employee], dated 5 December 2022, pages 6–7, paragraph 20.

¹¹¹ Witness Statement of [Senior R&S Employee] dated 26 September 2022, page 4, paragraph 13. In addition, the PAE Bid Consultant confirmed that he was not directly aware of any agreements between the Parties, including in relation to the Relevant Tenders, nor did he have any direct or indirect contact with individuals from Mitie or Landmarc while acting for PAE. [PAE's Bid Consultant] Response to Question 5 of the CMA's s.26 Notice dated 1 March 2022.

¹¹² Supplementary Witness Statement of [Senior R&S Employee], dated 5 December 2022, page 3, paragraph 10.

¹¹³ Supplementary Witness Statement of [Senior R&S Employee], dated 5 December 2022, pages 1 and 5, paragraphs 4 and 15.

¹¹⁴ Witness Statement of [a member of the PAE bid team], dated 14 November 2022, pages 8–9, paragraph 26.

¹¹⁵ Witness Statement of [a member of the PAE bid team], dated 14 November 2022, pages 8–9, paragraph 26; see also paragraph 54 above.

denying that it had made any request or placed any pressure on PAE to withdraw from the Relevant Tenders.¹¹⁶

59. The Senior R&S Employee confirmed that when she was forwarded the HO's request for clarification, she raised the matter with her in-house counsel. She did not share the content of the Withdrawal Messages but confirmed that she had no knowledge of coordination with Mitie regarding PAE's withdrawal, nor any agreement or inducement from Mitie for PAE to withdraw. [§<] and confirmed that she instructed the PAE Bid Consultant to do so [to respond to the HO's request for clarification].¹¹⁷ However, despite being instructed by the Senior R&S Employee to do so, PAE's Bid Consultant did not respond to the HO's request for clarification.
60. The CMA therefore concludes that, taking account of the totality of evidence, the reasons given to the HO in the Withdrawal Messages for PAE's withdrawal from the Relevant Tenders are uncorroborated by and are inconsistent with the substantial evidence reviewed by the CMA and described above casting significant doubt as to their veracity. The balance of the substantial evidence obtained by the CMA also provides a plausible account as to why the Withdrawal Messages did not reflect the real reasons for PAE's withdrawal from the Relevant Tenders.

Conclusion on the evidence

61. For the reasons set out above, the CMA has concluded that the balance of the evidence obtained indicates that PAE's decision to withdraw from the Relevant Tenders was unilateral and that the Suspected Conduct did not occur. In particular, the balance of the evidence obtained does not show any request from Mitie or other coordination in relation to PAE's decision to withdraw from the Relevant Tenders and indicates that the content of the Withdrawal Messages was incorrect.

E The CMA's Final Decision

62. In view of the CMA's conclusions described above, the CMA has decided to close the Investigation on the basis that the conditions of the Chapter I prohibition are not met in this case and therefore there are no grounds for further action.

¹¹⁶ Jaggaer message from [§<] (Mitie) with subject 'Re: IMPORTANT PLEASE READ: Commercial – In Confidence' dated 6 October 2021, and attachment with filename 'PAE Withdrawal – [§<] Response'.

¹¹⁷ Witness Statement of [Senior R&S Employee], dated 26 September 2022, pages 5–6, paragraphs 17–18; and Supplementary Witness Statement of [Senior R&S Employee], dated 5 December 2022, page 7 paragraph 21 and page 5 paragraph 15.

Juliette Enser

Senior Director, Cartels

for and on behalf of the Competition and Markets Authority

14 February 2023