

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

NOTICE UNDER PARAGRAPH 2(4) OF SCHEDULE 10 TO THE ENTERPRISE ACT 2002 (THE ACT) – CONSULTATION ON MODIFICATIONS TO PROPOSED UNDERTAKINGS IN LIEU OF REFERENCE PURSUANT TO SECTION 73 OF THE ACT

ME/7007/22

INTRODUCTION

1. On 17 January 2023, the CMA issued a Notice of Consultation on the Proposed Undertakings to address the competition concerns identified in its SLC Decision of 22 November 2022. The terms defined in the Notice of Consultation have the same meaning in this Notice.

THE PROPOSED MODIFICATIONS

2. The CMA proposes to modify the Proposed Undertakings by adding Baker Hughes Company (the ultimate parent company of Baker Hughes Nederland Holdings B.V.) to the entities giving and signing the undertakings and by amending the text of Schedule 1 paragraph 1(b). The undertakings as modified are referred to as the **Modified Undertakings**.
3. On 1 February 2023, the CMA received a submission from one customer in response to its Notice of Consultation (the **Response**).¹
4. In its Response, this customer made the following comments:
 - (a) The provision in Schedule 1, paragraph 1(b) of the Proposed Undertakings should be modified. According to this provision, BH would subcontract activity or reimburse the Proposed Purchaser with the economic value of customer

¹ Customer response to CMA Consultation on Proposed Undertakings in lieu of reference of 1 February 2023.

contracts if customer consent was not granted immediately. This third party submitted that a requirement to obtain immediate customer consent was impractical and could put a customer in a difficult and compromised position should such consent not be obtained immediately, in particular because it takes some time for a customer to understand and evaluate the Proposed Purchaser's intentions and capabilities.

- (b) The Proposed Undertakings should be modified to broaden the definition of "Key Staff" in the Proposed Undertakings to cover for the technical staff;
- (c) The Proposed Undertakings should be modified to expressly provide that the purchaser will be given by BH the global technical support it requires;
- (d) The Proposed Undertakings should be modified to include express provisions that cover all staff training relevant for the operation of the Divestment Business;
- (e) The Proposed Undertakings should contain an express provision in the UILs that the customer is free to switch to an alternative provider, with no adverse consequences in relation to the services provided by BH for such period as may be necessary whilst an alternative provider is appointed and installed; and
- (f) The Proposed Undertakings should be modified to include a requirement for BH to report to the CMA on its compliance with the undertakings.

5. In response to this feedback, and following discussions with the CMA, BH has offered to address the concern set out in paragraph 4(a) above. BH has committed to seek to obtain such consent from customers without delay and to give customers necessary information about the purchaser to assist customers in making an informed decision. These changes to the wording in Schedule 1 paragraph 1(b) of the Proposed Undertakings make clearer that the customer will not be pressured to 'immediately' give consent to the transfer of the relevant part of its contract and will have access to necessary information to assess the capabilities of the Proposed Purchaser. This change also mitigates the risk that a customer would refuse consent as a result of a lack of information or time to consider the request.

6. The other modification to the Proposed Undertakings refers to the addition of Baker Hughes Company as one of the companies giving and signing the Modified Undertakings. The CMA considers this addition is appropriate and necessary given that Baker Hughes Company is the ultimate parent company of Baker Hughes Nederland Holdings B.V..

7. The CMA currently considers that no other modifications to the Proposed Undertakings are necessary to address the concerns raised in the Response to the Notice of Consultation:
- (a) The definition of 'Key Staff' in the Proposed Undertakings is sufficiently broad to cover all the relevant staff whose performance affects the viability of the Divestment Business. Furthermore, in the Asset Purchase Agreement agreed between the Proposed Purchaser and BH, as conditionally approved by the CMA, BH has put in place retention mechanisms aimed at ensuring the transfer of the Key Staff;
 - (b) This customers' concerns in relation to the level of training and overall support to be provided by BH are addressed by provisions the Proposed Purchaser has agreed with BH in the TSA, as approved by the CMA;
 - (c) In the context of clear-cut structural remedies, the CMA does not typically require regular reporting on compliance. In particular, the contractual mechanisms agreed between the parties and the incentives of the purchaser to monitor and report any instance of non-compliance reduce any risk that the CMA would not become aware of any possible non-compliance with the Proposed Undertakings. In the event of non-compliance, the Proposed Undertakings provide the CMA with powers to direct the Parties to take steps to secure compliance with the Proposed Undertakings; and
 - (d) The Proposed Undertakings do not prevent a customer from terminating its contract with BH and switching to an alternative purchaser and the consequences of termination are those contractually agreed by BH and each of its customers and are independent of the Proposed Undertakings.
8. For the reasons set out in the Notice of Consultation, dated 17 January 2023, the CMA currently believes that the Modified Undertakings are clear-cut and capable of ready implementation and are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
9. The text of the Modified Undertakings has now been published on the case page.

PROPOSED DECISION AND NEXT STEPS

10. For the reasons set out in the Notice of Consultation of 17 January 2023, the CMA currently considers that the Modified Undertakings 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.

11. The CMA therefore gives notice that it proposes to accept the Modified Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the Modified Undertakings is available on the CMA web pages.²
12. Before reaching a decision as to whether to accept the Modified 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 Modified Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Modified Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.³
13. Representations should be made in writing to the CMA and be addressed to:

Rafia Saif
Mergers Group
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ

Email: Rafia.Saif@cma.gov.uk

Telephone: 020 3738 6932

Deadline for comments: 24 February 2023

² See [Baker Hughes Nederland Holdings B.V. / Oz MidCo AS \(Altus Intervention\) merger inquiry - GOV.UK \(www.gov.uk\)](#).

³ Under paragraph 2(4) of Schedule 10 to the Act.