

**COMPLETED ACQUISITION BY CHC GROUP LLP OF  
OFFSHORE HELICOPTER SERVICES UK LIMITED, OFFSHORE  
SERVICES AUSTRALASIA PTY LTD, AND  
OFFSHORE HELICOPTER SERVICES DENMARK A/S**

**Issues Statement**

**16 December 2021**

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

**The reference**

1. On 29 November 2021, the Competition and Markets Authority (**CMA**), in exercise of its duty under [section 22\(1\)](#) of the Enterprise Act 2002 (the **Act**), referred the completed acquisition (the **Merger**) by CHC Group LLP (CHC) of Offshore Helicopter Services UK Limited (**Babcock Offshore UK**), Offshore Services Australasia Pty Ltd (**Babcock Offshore Australia**), and Offshore Helicopter Services Denmark A/S (**Babcock Offshore Denmark**) (together, the **Fisher Business**) (CHC and the Fisher Business together are the **Parties** or, for statements referring to the future, the **Merged Entity**) for further investigation and report by a group of CMA panel members (the **Group**).
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

3. In answering these two questions we will apply a 'balance of probabilities' threshold to our analysis. That is, we will decide whether it is more likely than not that the Merger will result in an SLC.<sup>1</sup>

## **Purpose of this issues statement**

4. In this issues statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
5. The CMA's Phase 1 Decision<sup>2</sup> contains much of the detailed background to this issues statement. We are publishing this issues statement in order to assist parties submitting evidence to our investigation. The issues statement sets out the issues we currently envisage being relevant to our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.
6. At phase 2, while we are not precluded from considering any other issues which may be identified, we intend to focus our investigation on the area in which the CMA found in the Phase 1 Decision that the Merger gives rise to a realistic prospect of an SLC, that is as a result of horizontal unilateral effects in the supply of helicopter services to transport crews to and from offshore oil and gas (**O&G**) platforms (**O&G Offshore Transportation Services**) in the UK.
7. We intend to use evidence obtained during the phase 1 investigation. However, we will also be gathering and considering further evidence on these and any other issues which may be identified during the course of the investigation.

## **Impact of Coronavirus (COVID-19)**

8. We are publishing this issues statement during the Coronavirus (COVID-19) pandemic, which is having significant impact on consumers and business across the world. The CMA has published a [statement](#) on its website on how

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<sup>1</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraph 2.36.

<sup>2</sup> The Phase 1 decision to refer unless undertakings accepted (will be published in due course on the [case page](#))

it has adjusted its working arrangements in response and [guidance](#) on key aspects of its practice during the pandemic.

9. Our approach to evidence gathering will take into account the difficulties that the pandemic may be causing for market participants in this sector. If appropriate, we will also take into account the impact of the pandemic in our assessment of the competitive effects of the Merger, although we are required to look beyond the short-term and consider what lasting structural impacts the Merger might have on the markets at issue.

## **Background**

### ***The Parties***

10. CHC is a limited liability company incorporated in the Cayman Islands, headquartered in Texas (USA), and operates helicopter services in various countries, including O&G Offshore Transportation Services in the UK.<sup>3</sup> CHC has a number of shareholders, referred to as 'common unit holders'. CHC's worldwide turnover in 2020 was approximately £608 million, of which approximately £118 million was generated in the UK.<sup>4</sup>
11. The Fisher Business was owned by Babcock International plc (**Babcock**) prior to completion of the Merger. The Fisher Business operates O&G Offshore Transportation Services internationally, with Babcock Offshore UK acting as its UK arm. Babcock is listed on the London Stock Exchange, and its principal activities relate to the supply of critical and complex engineering services in the defence, emergency services and civil nuclear sectors.<sup>5</sup> The turnover of the Fisher Business in 2020 was approximately £147 million worldwide, of which approximately £102 million was generated by Babcock Offshore UK in the UK.<sup>6</sup>

### ***Business activities and relevant overlap***

12. The Parties overlap in the supply of O&G Offshore Transportation Services in the UK. O&G Offshore Transportation Services are purchased by oil and gas companies involved in the extraction of oil and gas from submarine locations.

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<sup>3</sup> The Phase 1 Decision, paragraph 11.

<sup>4</sup> The Phase 1 Decision, paragraph 11.

<sup>5</sup> The Phase 1 Decision, paragraph 12.

<sup>6</sup> The Phase 1 Decision, paragraph 13.

The Parties provide O&G Offshore Transportation Services to customers in the North Sea.<sup>7</sup>

13. There are four categories of helicopters operated by UK O&G Offshore Transportation Services providers, namely: (i) light;<sup>8</sup> (ii) medium;<sup>9</sup> (iii) super-medium;<sup>10</sup> and (iv) heavy<sup>11</sup> helicopters. The main differences between these helicopter types include the distance they can travel (for example, heavy helicopters are used for longer flights in the Northern North Sea (**Northern Zone**) whereas medium helicopters are used for short flights in the Southern North Sea (**Southern Zone**)), the number of passengers they can carry (for example, light helicopters are configured for eight seats whereas heavy helicopters are configured for between 19 and 24 seats) and whether they can operate in certain weather conditions (only heavy helicopters have de-icing properties that enable them to operate in the most extreme weather conditions encountered in the North Sea). The Parties operate medium, super-medium and heavy helicopters, but neither operates light helicopters.

### ***The transaction***

14. On 31 August 2021, CHC acquired Babcock's O&G Offshore Transportation Services business in the UK, Australia and Denmark, through the acquisition of the entire issued share capital of Babcock Offshore UK, Babcock Offshore Australia and Babcock Offshore Denmark.<sup>12</sup>
15. The Parties informed the CMA that the Merger was also notified to the Australian Competition and Consumer Commission (ACCC).<sup>13</sup>

### **Our inquiry**

16. Below we set out some specific areas of our intended assessment in order to help parties who wish to make representations to us. However, these will not be the only areas for our assessment. For example, we will also look at the rationale for the Merger.

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<sup>7</sup> The Phase 1 Decision, paragraph 47.

<sup>8</sup> The Phase 1 Decision, paragraph 48.

<sup>9</sup> The Phase 1 Decision, paragraph 48.

<sup>10</sup> The Phase 1 Decision, paragraph 48.

<sup>11</sup> The Phase 1 Decision, paragraph 48.

<sup>12</sup> The Phase 1 Decision, paragraph 14.

<sup>13</sup> The Phase 1 Decision, paragraph 15.

## ***Jurisdiction***

17. We shall consider the question of jurisdiction in our inquiry. A relevant merger situation exists where the following conditions are satisfied<sup>14</sup>:
- (a) Two or more enterprises have ceased to be distinct; and
  - (b) Either:
    - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
    - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test).
18. The CMA's Phase 1 Decision found that it is or may be the case that the CMA had jurisdiction to review the Merger on the basis that two enterprises (ie CHC and the Fisher Business) have ceased to be distinct and that the turnover test is met.<sup>15</sup>

## ***The counterfactual***

19. The application of the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.<sup>16</sup> We will assess the possible effects of the merger on competition compared with the competitive conditions in the counterfactual situation.
20. In making our assessment, we shall consider possible alternative scenarios. The CMA is likely to only focus on significant changes that would have occurred in the counterfactual relative to the conditions of competition pre-merger, where there are reasons to believe that those changes would make a material difference to its competitive assessment.<sup>17</sup>
21. In the Phase 1 Decision, the CMA found that the counterfactual was the pre-existing conditions of competition. In reaching this decision, the CMA considered whether absent the Merger the Fisher Business would have exited

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<sup>14</sup> Section 23 of the Act.

<sup>15</sup> The Phase 1 Decision, paragraphs 17 – 26.

<sup>16</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraph 3.1

<sup>17</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraphs 3.8 and 3.9.<sup>18</sup> The Phase 1 Decision, paragraphs 30 – 38.

the market. This was in light of Babcock's submissions that it would have sought to find another buyer for the Fisher Business and, in the absence of such a buyer, would have ultimately closed it; and that, [✂]. The Phase 1 Decision did not find compelling evidence that the Fisher Business would have inevitably exited the market absent the Merger and therefore concluded that the cumulative conditions of the exiting firm framework were not met.<sup>18</sup>

22. Further, at phase 1, the CMA considered the impact of the Fisher Business's 'manage for value strategy' (which Babcock submitted ran in anticipation of exit from the market) on the Fisher Business' competitiveness and as such its impact on the relevant counterfactual. However, the evidence on the impact of the strategy was mixed, and given the counterfactual generally focuses only on significant changes to competition, the CMA did not consider it appropriate to adopt an alternative counterfactual to the pre-Merger conditions of competition on account of Babcock's manage for value strategy (but rather assessed the impact of this strategy in its competitive assessment).<sup>19</sup>
23. In our inquiry, in order to reach a judgement as to whether or not an SLC is likely to occur as a result of the Merger, we will select the most likely conditions of competition as the counterfactual against which to assess the Merger.<sup>20</sup>
24. To assess the appropriate counterfactual, we shall consider possible alternative scenarios absent the Merger and whether any of these possible scenarios make a significant difference to the conditions of competition. To this end, we shall consider in particular:
  - (a) the likelihood of the Fisher Business's exit from the market, absent the Merger, (through failure or otherwise);
  - (b) should exit have occurred, (as per (a) above), whether there would have been an alternative, less anti-competitive purchaser for the Fisher Business than CHC; and
  - (c) the impact of Babcock's 'manage for value' strategy on the Fisher Business's competitiveness, and whether this would have had an impact on the prevailing conditions of competition.
25. Significant changes affecting competition from third parties which would occur with or without the Merger (and therefore form a part of the counterfactual) are unlikely to be assessed in any depth as part of the CMA's counterfactual

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<sup>18</sup> The Phase 1 Decision, paragraphs 30 – 38.

<sup>19</sup> The Phase 1 Decision, paragraphs 39 – 44.

<sup>20</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraph 3.13

assessment.<sup>21</sup> The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the Merger,<sup>22</sup> which detail we intend to consider in the competitive assessment.

## ***Assessment of the competitive effects of the Merger***

### *Theory of harm*

26. The term ‘theory of harm’ describes the possible ways in which an SLC could arise as a result of a merger. A theory of harm provides the framework for our analysis of the competitive effects of a merger. Identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following further analysis in the course of this inquiry or receipt of additional evidence. We welcome views on the theory of harm described below.
27. Taking the approach followed in phase 1 as our starting point, we propose to assess in our phase 2 investigation whether the Merger gives rise to an SLC in the UK supply of O&G Offshore Transportation Services. This is a horizontal unilateral effects theory of harm. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that would otherwise provide a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.<sup>23</sup> The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative to which customers could switch. The CMA’s main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely. Furthermore, in markets with a limited likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns.<sup>24</sup>
28. In its Phase 1 Decision, the CMA found there was a realistic prospect of an SLC as a result of horizontal unilateral effects as:<sup>25</sup>

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<sup>21</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraph 3.10

<sup>22</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraph 3.7

<sup>23</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraph 4.1.

<sup>24</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraph 4.3.

<sup>25</sup> Phase 1 Decision, paragraph 155.

- (a) the supply of UK O&G Offshore Transportation Services is relatively undifferentiated and concentrated, with only four suppliers (the Parties, Bristow and NHV) and the Parties' combined share of supply post-Merger is high;
  - (b) the tender data, the Parties' internal documents and evidence from third parties show that the Parties pose an important competitive constraint on one another;
  - (c) the evidence gathered by the CMA indicates that Babcock Offshore UK is continuing to bid for contracts, despite adopting a 'manage for value' strategy, and the constraint from other competitors is not sufficient to prevent a realistic prospect of an SLC given the level of concentration in the market;
  - (d) the evidence gathered by the CMA indicates that the threat of entry does not act as a material competitive constraint on the current incumbent UK suppliers of O&G Offshore Transportation Services; and
  - (e) the CMA also found that barriers to entry are high in the O&G Offshore Transportation Services market, when considering all the assets and regulatory requirements required to enter the UK.<sup>26</sup>
29. We will use the data and information collected in the CMA's phase 1 investigation and seek to expand and augment this evidence-base, as appropriate, to assess the theory of harm set out above. For example, we expect to examine:
- (a) what factors customers consider when choosing between suppliers and the nature of competition during customer tenders;
  - (b) the market structure and market position of the Parties and their competitors, including the strength of the constraint the Parties exert on each other and the remaining constraint exerted on the Parties by other suppliers;
  - (c) the impact and relevance of the trends in industry demand;
  - (d) the impact of Babcock's 'manage for value' strategy on its competitiveness; and
  - (e) the extent to which entrants do or could pose a constraint on suppliers.

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<sup>26</sup> Phase 1 Decision, paragraphs 162 – 169.



30. Subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.

### *Market definition*

31. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.<sup>27</sup> The CMA is therefore required to identify the market or markets within which an SLC exists. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.<sup>28</sup>
32. In the Phase 1 Decision, the CMA considered the impact of the Merger on the supply of O&G Offshore Transportation Services in the UK
  - (a) In terms of product scope, the Phase 1 Decision included all helicopter types (as outlined in paragraph 14 above) but did not include search and rescue helicopter types.
  - (b) In terms of geographic scope, the Phase 1 Decision considered that the scope should be UK-wide, but also considered potential entry from suppliers based outside the UK in its competitive assessment.
33. We will use the frame of reference adopted in the Phase 1 Decision as a starting point for our analysis and our view of market definition will be largely drawn from the findings of our competitive assessment. Where relevant, we will consider out-of-market constraints and/or any differences in the degree of competitive constraints on the Merged Entity from different suppliers.

### *Countervailing factors*

34. We will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC arising from the Merger. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
35. We will consider evidence on entry and/or expansion by third parties, which may be sponsored, for example, by customers, including any evidence on barriers to entry/expansion, and whether such entry or expansion would be

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<sup>27</sup> [The Act section 36\(1\)\(b\)](#)

<sup>28</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraph 9.1

timely, likely, and sufficient to prevent any SLC from arising as a result of the Merger.<sup>29</sup>

## **Possible remedies and relevant customer benefits**

36. Should we conclude that the Merger is expected to result in an SLC in one or more markets, we will consider whether and, if so, what remedies might be appropriate and will issue a further statement.
37. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

## **Responses to the issues statement**

38. Any party wishing to respond to this issues statement should do so in writing, by **no later than 4 January 2022**. Please email [CHC.Babcock@cma.gov.uk](mailto:CHC.Babcock@cma.gov.uk).

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<sup>29</sup> [Merger Assessment Guidelines \(CMA129\) March 2021 revised Guidance](#), paragraph 8.30.