

Completed acquisition by Amec Nuclear Holdings limited of Energy, Safety and Risk Consultants (UK) limited from Serco limited

ME/5595/12

The OFT's decision on reference under section 22(1) given on 21 December 2012. Full text of decision published 16 January 2013.

---

**Please note that the square brackets indicate 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.**

## **PARTIES**

1. AMEC Nuclear Holdings Limited (**AMEC**) is a wholly-owned subsidiary of AMEC Group Limited, an international provider of engineering, consultancy and project management services. AMEC employs 1,300 employees in the UK and the overall AMEC Group had a worldwide turnover of £3,261 million in 2011.
2. Energy, Safety and Risk Consultants (UK) Limited (**ESRC**) was the nuclear technical services division (formerly called Serco Nuclear Technical Services (**Serco NTS**)) of Serco Group plc (**Serco**), an international service company. Prior to the transaction, Serco NTS provided nuclear consulting, engineering and laboratory services for civil and defence customers and employed around 500 staff. In its 2011 financial year, Serco NTS had a turnover of £67.1 million.

## **TRANSACTION**

3. Serco created ESRC specifically to migrate the assets and resources of its nuclear technical services division as, previously, Serco NTS was a fully integrated division within Serco and was not a corporate entity with a distinct legal personality.
4. Following a managed sale process, AMEC entered into a Share Purchase Agreement with Serco to acquire the entire issued share capital of ESRC

from Serco on 29 June 2012 for a cash consideration of £137 million (the **Transaction**).

5. AMEC and Serco further agreed to put in place a Transitional Services Agreement which provides ESRC with services for a transitional time period. [ ]. The majority of the periods for which transitional services are provided expire in or around [ ].

## **JURISDICTION**

6. The Office of Fair Trading (**OFT**) considers the Transaction has resulted in two enterprises ceasing to be distinct as set out in section 23(1)(a) of the Enterprise Act 2002 (the **Act**).
7. In the year ending 31 December 2011, Serco NTS had a total turnover of £67.1 million, of which £4 million was non-UK turnover. Accordingly, the turnover test in section 23(1)(b) of the Act is not met.
8. The parties claim that they are active in the provision of Tiers 2 and 3 services in the civil and defence sectors, but that their combined share of supply in any of these sectors or Tiers is below twenty five per cent.<sup>1</sup> As such, AMEC submits that the share of supply test in section 23(4) of the Act is not met by the Transaction.
9. The OFT understands that there is no independent estimate of the market size. The OFT's market testing revealed that there is a wide range of views of the total size of the market, or sectors within it. On the basis of this market testing, the OFT received sufficient evidence to suggest that the share of supply test with respect to the Tier 2 civil or defence sectors is not met.
10. In relation to Tier 3 civil and defence sectors, the OFT's investigation indicated that the parties have a share of supply in excess of 25 per cent. This is on the basis of a range of estimates of the total size of the market supplied by third parties.

---

<sup>1</sup> Paragraphs 15 and 16 below explain how these sectors and Tiers are defined.

11. The OFT considers that the share of supply test in respect of the Tier 3 civil and defence sectors is met on an 'is or may be the case' basis.<sup>2</sup>
12. Accordingly, the OFT considers that it is or may be the case that the Transaction has resulted in the creation of a relevant merger situation for the purposes of section 23 of the Act.

## **TIMING**

13. The parties made a satisfactory submission on 7 November 2012. The administrative deadline is 9 January 2013. The statutory deadline is 3 January 2013.

## **MARKET DEFINITION**

14. The parties overlap in the supply of nuclear services to civil and defence customers, predominantly, but not exclusively, in the provision of Tier 3 services. These sectors and Tiers are considered in greater detail below.

## **INDUSTRY STRUCTURE**

15. AMEC submits that the market for nuclear services can be segmented into the supply of services to the civil and defence sectors, and previous cases support this segmentation.<sup>3</sup> These sectors are described as follows:
  - i. The civil sector – relates to nuclear power generation or the use of radioactive isotopes in sectors such as medicine and testing and inspection (for example, in weld radiography).
  - ii. The defence sector – relates to the production and maintenance of nuclear weapons or in naval nuclear (for example, associated with reactors powering submarines).

---

<sup>2</sup> See *Merger Assessment Guidelines*, Joint Publication of the Competition Commission and the Office of Fair Trading, OFT1254, September 2010, paragraph 2.5.

<sup>3</sup> ME/4488/10, *Anticipated acquisition by Babcock International Group plc of VT Group plc*, OFT decision of 29 July 2010, paragraphs 5, 6 and 103.

16. AMEC submits that the provision of nuclear services is commonly discussed in terms of a tiered structure, generally including Tiers 1, 2 and 3 (although some companies also include a Tier 4). There are variations in the way that these Tiers are defined; however, the most commonly adopted definition, and as considered in previous cases,<sup>4</sup> is that provided by the Nuclear Industry Association (**NIA**). In summary, it describes the Tiers as follows:

- i. Tier 1: ownership and operational management of large facilities, very large programmes and major sites.
- ii. Tier 2: delivery of a range of services provided under contract with Tier 1 operators or direct with the asset owners themselves. This range of services includes major projects, routine servicing contracts, and plant improvement projects.
- iii. Tier 3: provision of specialist services or consultancy which includes items such as feasibility studies, design and engineering services (across a wide range of functional areas), project and programme management, safety cases and technical consulting. Tier 3 service providers either contract with Tier 2 customers (for example, for the supply of services in support of major projects or service programmes), or directly with Tier 1 contractors or asset owners themselves as part of smaller contracts or to provide more specialised services.

17. AMEC further submits that the type of contract award for both civil and defence customers is typically:

- i. a project-based tender award, where customers run competitions for specific pieces of work or
- ii. framework agreement competitions, where suppliers compete to be placed on a framework agreement and projects are 'called-off' under the agreement, potentially with mini-competitions between suppliers on the framework panel.

---

<sup>4</sup> Ibid, paragraph 16 and paragraph 21, third bullet.

18. The OFT understands that some small-value awards are made directly by customers without running a competition.
19. The OFT understands further that, for certain bids, suppliers may create bidding consortia, whereas on others, suppliers may bid independently, or suppliers may form 'prime-' and 'sub-contractor' agreements.

## **PRODUCT SCOPE**

20. The OFT's approach to determining the most appropriate product frame is to consider the narrowest set of substitutable products for which a hypothetical monopolist would be able to raise prices. Typically this is done with reference to demand-side factors alone, although supply-side factors and other market characteristics may also be relevant.<sup>5</sup>

21. The OFT has considered:

- i. whether to segment the market for the supply of nuclear services by customer type, specifically the civil and defence sectors
- ii. whether to segment the type of nuclear service provision in accordance with the tiered structure proposed by the NIA, and
- iii. whether to further segment the type of nuclear service provision by type of service.

### **Civil and defence nuclear sectors**

22. As identified in paragraph 15 above, the product market can be segmented into the supply of nuclear services to the civil and defence sectors. The parties consider that this distinction is not relevant to this case because the various services provided to each sector are similar and the same suppliers are actual or potential rivals in both. AMEC's submissions did suggest, however, that expansion from the civil sector into the defence sector would incur some costs (specifically, security clearances and IT systems).

---

<sup>5</sup> *Merger Assessment Guidelines*, Section 5.2.

23. Previous decisions in this area support segmentation into civil and defence sectors.<sup>6</sup> Third parties also generally supported segmentation by customer type.
24. From a demand-side perspective, the OFT understands that there are fundamental differences in customer requirements which support segmentation by customer type. For example, [ ]. One third party competitor indicated that competition for defence contracts tends to be national in scope, whereas civil contracts can attract competition from outside the UK. Therefore, the competitor set for the supply of nuclear services to defence customers is narrower than for the civil sector.
25. Accordingly, the OFT does not consider that the parties have provided sufficient evidence for it to adopt a different approach to its established practice in this area, and has therefore assessed the case on the basis of a distinction between the civil and defence sectors.

### **Service type**

26. Further, AMEC does not support segmentation by service type either between service Tiers or by the type of service within each Tier.
27. AMEC submits that the definition of Tiers is not independently established and that different market participants may have a different understanding of the services that comprise Tier 1, Tier 2 and Tier 3. The evidence on this point was mixed. There was some differentiation between third parties as to the inclusion of certain services within each Tier; however, third parties indicated that different suppliers existed at different Tiers of the market. It appears from market testing that only very large suppliers credibly compete as 'prime' contractors for Tier 1 or Tier 2 projects due to customers' requirements in relation to the execution risk and financial stability associated with their supplier base. Therefore demand-side substitution between providers at different Tiers is undermined by the fact that these providers provide a different service in terms of size, expertise, know-how and execution risk. Moreover, the OFT understands that Tier 3

---

<sup>6</sup> ME/4488/10, *Anticipated acquisition by Babcock International Group plc of VT Group plc*, OFT decision of 29 July 2010, paragraphs 5, 6 and 103. Also, see *Completed acquisition by Babcock International Group plc of the Strachan & Henshaw Division of the Weir Group plc.*, 2 July 2008, paragraphs 6, 7 and 8. In both decisions the OFT assessed each transaction with reference to 'defence' and 'non-defence' sectors.

has a broader range of competitors, including firms with distinct service specialism, and that these firms would often act as sub-contractors to Tier 2 or Tier 1 contractors, partly due to the lack of such specialist skills within Tier 1 contractors. Therefore, on balance, there appears to be both credible demand and supply-side reasons why segmentation by Tier is appropriately cautious. Again, and as already referenced, this is supported by previous cases.<sup>7</sup>

28. In this case, certain third party competitors told the OFT that they also viewed the market in terms of the specific nature of the services being supplied, such that segmentation could occur on a more granular basis – for example, at a broad level the civil sector can be segmented into decommissioning and clean-up services. Moreover, some third parties considered that the parties may have higher shares of supply for certain specialist services within Tier 3 compared to their share of supply for Tier 3 as a whole, specifically the supply of safety case assessment services. These services are considered in greater detail below; however, no competition concerns were found to arise in relation to such.
29. As no competition concerns arise when looking either on a narrow basis at specific services (for example, safety case assessment services), or when considering the supply of nuclear services more broadly, the OFT does not have to conclude on the precise product frame.

### **Conclusion on product market**

30. Given that no competition concerns arise, the OFT has not found it necessary to conclude on the issue of product market in this case. However, for the reasons outlined above, the OFT has assessed this merger on the basis of the supply of nuclear services, segmented into the civil and defence sectors, and further segmented by the tiered service structure. In addition, the OFT has considered the supply of nuclear safety case assessment further.

---

<sup>7</sup> See *Completed acquisition by Babcock International Group plc of the Strachan & Henshaw Division of the Weir Group plc.*, 2 July 2008, in which the OFT considered specific types of non-defence services (for example, nuclear decommissioning and fuel route support services), paragraph 7.

## GEOGRAPHIC SCOPE

31. AMEC submits that the market for the provision of nuclear services is worldwide, particularly in the civil sector. AMEC asserts that there 'is nothing to stop' organisations based outside the UK from competing for contracts within it. AMEC claims further that this view is supported by the OFT's decision in *Babcock/VT*<sup>8</sup> and the European Commission's decision in *Toshiba/Westinghouse*.<sup>9</sup>
32. Third parties generally supported a UK-wide geographic frame; although they noted that the market was becoming increasingly international and some respondents to market testing stated that they competed regularly against companies based outside the UK. However, the OFT is unsure whether this relates to services offered at all Tiers or only at certain levels (for example, a competitor told the OFT that international expansion typically only occurred at Tier 1). However, the OFT notes that not all third party competitors contacted had operations outside the UK.
33. Moreover, AMEC informed the OFT that customers liked suppliers to have proximate geographic presence to their nuclear facilities, and that a contract's award criteria could favour bids which supported the local economy. As such, these factors might make it harder for internationally-based suppliers to compete for contracts, although some third parties highlighted that international companies had expanded into the UK via acquisition.
34. Finally, the OFT notes that in the defence sector, there are few non-UK suppliers.

---

<sup>8</sup> ME/4488/10, *Anticipated acquisition by Babcock International Group plc of VT Group plc.*, OFT decision of 29 July 2010, paragraph 17 (referencing the OFT decision on the *Completed acquisition by Babcock International Group plc of the Strachan & Henshaw Division of the Weir Group plc.*, 2 July 2008).

<sup>9</sup> Case No COMP/M.4153, *Toshiba/Westinghouse*, decision of 19 September 2006. Note that while the market was ultimately left open in this case, the European Commission did consider that the market was at least EEA-wide and that while some customers may desire their suppliers to be close to their nuclear power station sites, the market investigation showed that there was 'at least potential competition from all main nuclear services providers worldwide for important service contracts' (paragraph 44).

## **Conclusion on geographic scope**

35. The OFT believes that the most appropriate geographic frame to undertake the assessment of this Transaction is the UK-only, although it did consider the extent to which companies operating outside the UK compete for nuclear service contracts in its substantive assessment. In any event, as no competition concerns arise, the OFT does not need to conclude on the issue of geographic market.

## **Conclusion on market definition**

36. The OFT has undertaken its substantive assessment in relation to the supply of nuclear services, segmenting by the civil and defence sectors and further segmenting by tiered service type. The OFT has taken a cautious approach of adopting a geographic frame of reference of the UK.

# **COMPETITIVE ASSESSMENT**

## **UNILATERAL EFFECTS**

37. The OFT understands that the parties overlap in the provision of nuclear services to civil customers in Tier 2 and Tier 3 services, and that the parties do not currently overlap in the provision of services to defence customers or to Tier 1 civil customers.<sup>10</sup>

38. Horizontal mergers give rise to unilateral effects where they increase the ability and incentive of merging parties to increase prices or reduce quality of service post-merger.<sup>11</sup>

39. Where products/services are differentiated, as is the case in relation to the supply of nuclear services, unilateral effects are more likely where the products/services compete closely with one another.<sup>12</sup>

40. The OFT has therefore assessed the likelihood of a realistic prospect of anti-competitive unilateral effects occurring as a consequence of the

---

<sup>10</sup> As stated in paragraph 5 above, the OFT understands that Serco will continue to operate in a limited capacity in the provision of Tier 1 nuclear services and that such services (and underlying contracts) were not novated to ESRC for inclusion in the Transaction.

<sup>11</sup> *Merger Assessment Guidelines*, Section 5.4.

<sup>12</sup> *Merger Assessment Guidelines*, Section 5.4, paragraph 5.4.6.

Transaction. The differences between civil and defence customers, as well as the different Tiers of service have been drawn out where relevant.

## MARKET SHARES

41. AMEC claims that its post-merger share of supply in the nuclear services market is small – less than 10 per cent combined in the Tier 2 and Tier 3 civil and defence sectors. Specifically, the parties state that their combined market share in Tier 2 is [0-five] per cent in the civil sector and [0-five] per cent in the defence sector, and in Tier 3 it is [five -10] per cent in the civil sector and [five-10] per cent in the defence sector.
42. There is considerable uncertainty in relation to the overall size of the nuclear services market. Further, third parties did not generally agree on how much customers spend on nuclear services in aggregate. Therefore, the OFT has found it difficult to corroborate these market share estimates.
43. Third parties generally considered that the parties may have a greater share of supply for the provision of certain specialist services, such as safety case services (as discussed below); although most believed a large number of alternate independent providers remained post-merger.
44. Nonetheless, it is the OFT's view that a simple market share analysis in a bidding market is not appropriate as market shares at a point in time may not accurately capture the extent to which the parties actively compete against one another.<sup>13</sup> Accordingly, the OFT has not placed significant weight on market shares; however, it is recognised that market shares can be indicative of the extent of the parties' presence in a market. In this case, the OFT received evidence from third parties which supported the parties having a share well in excess of 25 per cent in Tier 3 civil and defence sectors. Therefore, the OFT considered it appropriate to consider further the extent of closeness of competition between the parties by reference to bidding data, and other qualitative evidence on pre-merger rivalry.

---

<sup>13</sup> Market shares may show the result of competitive interaction, rather than demonstrate the closeness of competition for tenders.

## **CLOSENESS OF COMPETITION**

45. AMEC claims that the parties are not close competitors. AMEC argues that it is a larger, more diversified engineering and consultancy business whereas the ESRC has specific specialist capabilities within nuclear consultancy. Further, AMEC submits that the market for the provision of nuclear consultancy services is highly competitive with a range of providers, including several from outside the UK. AMEC states that the parties tend to have a different customer base, with limited actual overlap between customers.
46. Notwithstanding this, AMEC states that almost all tenders are competitively tendered in the civil sector and that each tender attracts around eight qualified competitors. AMEC states that it will continue to be constrained by a number of large competitors post-merger.

### **Defence sector**

47. One customer in the defence sector made it clear that in the past AMEC had not undertaken significant volumes of work for it, unlike ESRC. This third party customer went on to tell the OFT that it was intending to potentially open up its supplier base in the future, but that AMEC, prior to the Transaction, would not have been considered a credible competitor for its contracts, and therefore, the Transaction had not resulted in a reduction in competition of its supplier base.

### **Civil sector**

48. During the OFT's market testing, many respondents identified differences between the parties – for example, the limited Tier 2 capability of ESRC, and the difference in scale and service offering of the parties. The main area of overlap identified by third parties related to safety case assessment, which is considered below.
49. Many third parties did not perceive the parties as close competitors, although two customers identified the parties as having previously competed against each other for mini-tenders in the past. Neither had concerns in relation to the Transaction. Finally, certain competitors also perceived one or other of the parties as a close competitor, but not both.

## **Safety case assessment**

50. AMEC submits that even within the supply of specialist safety case assessment services, there is a diverse range of potential services which could be provided to customers – for example, a supplier could assess the likelihood of failure of equipment in the design of facilities or provide independent nuclear safety case assessment for regulatory approval. AMEC submits that it has historically operated at the ‘design’ level, whereas ESRC has historically operated on an advisory basis at the implementation level.
51. Some third parties considered safety case assessment to be the area where the parties had greatest overlap in service offering and the OFT received concerns from one competitor offering these services. In particular, this competitor considered that the parties are the two main suppliers of such services and that the availability of specialist labour in this market segment was scarce.
52. Notwithstanding these views, there was, in general, limited concern amongst third parties in relation to the impact of the Transaction for these services, particularly from customers. Moreover, some third parties were able to identify a number of alternate providers.

## **BIDDING DATA**

53. Given the nature of the nuclear services market, and the fact that it is predominantly a bidding market, the parties provided a sample of bids that each party had competed for over three years.<sup>14</sup> On the basis of the evidence available, it does not appear that the parties are particularly close competitors for the following reasons:
- i. Based on the sample, the parties did not appear to have competed for many of the same tender awards. Even where the parties had competed on the same tender, it was unclear to the OFT that the parties were directly competing against each other; however, the OFT understands that in respect of some of these bids the parties competed for different lots within a multi-lot framework award.

---

<sup>14</sup> In total, the parties provided a sample of 180 bids for the three-year period spanning 2009, 2010 and 2011. The sample represented approximately three per cent of the total bids that each party contested in the three year period.

- ii. The larger bids which ESRC competed for were significantly smaller in size than the largest which AMEC competed for, supporting some differentiation in capabilities.
- iii. The parties won the majority of the tenders they competed for: both won about 60 per cent of the bids in which they were involved in each of the three relevant years. This suggests that the parties do not compete head-to-head for a significant proportion of competitive tenders.

## **BARRIERS TO ENTRY AND EXPANSION**

- 54. When assessing possible supply-side responses, including entry, expansion and repositioning, the OFT will consider whether the response would be (i) timely, (ii) likely, and (iii) sufficient.<sup>15</sup> In terms of timeliness, the guidance suggests that the OFT will look for entry to occur within two years.<sup>16</sup>
- 55. AMEC argues that the growth in the number of competitors and entry of international competitors into the UK marketplace indicates low barriers to entry and expansion.
- 56. Third parties generally considered the barriers to entry to be high, particularly in relation to defence contracts and particularly in relation to larger service contracts. Factors cited by third parties as giving rise to high barriers to entry included: the need for specialist skills and a proven track record; the need for financial stability; and certain security considerations.
- 57. However, third parties considered expansion to be relatively easier than de novo entry. Some third parties stated that many nuclear services are not unique to the nuclear industry and could equally be applied to other industries, for example, oil and gas. This implies that barriers to entry and expansion may vary depending on the level of nuclear specialism of a particular service.
- 58. The OFT's investigation did not reveal any specific entry or expansion plans in relation to particular local markets, although several third parties highlighted the names of certain third party competitors which had

---

<sup>15</sup> *Merger Assessment Guidelines*, paragraph 5.8.3.

<sup>16</sup> *Merger Assessment Guidelines*, paragraph 5.8.11.

expanded their international operations into the UK in recent years, or diversified from engineering into nuclear service provision. However, the OFT is not clear as to the extent to which these suppliers provide Tier 2 and Tier 3 services.

59. The OFT understands that the size of the nuclear services market in the UK is likely to increase in the short- to medium- term for two reasons:
- i. the Magnox reactor and fuel cycle is reaching the end of its existence and therefore this will result in new decommissioning activity, and
  - ii. there are a number of new civil nuclear build projects in planning.
60. It is plausible that this expansion in supplier opportunities may attract new entrants to the UK market.

#### **Conclusion on barriers to entry and expansion**

61. As no competition concerns arise, it is not necessary for the OFT to conclude on the extent of barriers to entry and expansion.

#### **BUYER POWER**

62. In some cases, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. For countervailing buyer power to prevent a substantial lessening of competition, it is not sufficient that it merely existed before the merger. It must also remain effective following the merger.<sup>17</sup>
63. AMEC did not comment on the extent to which there is countervailing buyer power.
64. Third parties pointed to the relatively concentrated number of large customers in the UK – for example, Magnox and the Ministry of Defence (**MoD**) – which some argued gave them a degree of countervailing buyer power, allowing them to successfully negotiate on price and quality. However, some third parties stated that the specialist nature of some

---

<sup>17</sup> *Merger Assessment Guidelines*, Section 5.9.

services weakened this buyer power, given that capabilities in certain areas are scarce.<sup>18</sup>

### **Conclusion on buyer power**

65. As no competition concerns arise, it is not necessary for the OFT to conclude on the extent of countervailing buyer power.

### **THIRD PARTY VIEWS**

66. The OFT received responses from a number of competitors and customers, the MoD, the Nuclear Decommissioning Authority (**NDA**) and the Office for Nuclear Regulation. Third party views have been referred to above where appropriate.

67. In general, there were limited competition concerns in relation to the Transaction, and third parties generally perceived that there would be sufficient competition in the market remaining post-merger.

68. Two competitors raised potential vertical issues, which are considered in further detail below. However, no other potential theories of harm were raised by third parties, and the OFT did not receive any evidence to suggest other potential theories of harm were credible.

### **VERTICAL EFFECTS**

69. Non-horizontal mergers are usually benign but can raise competition concerns where upstream suppliers are able to partially or fully foreclose downstream competitors. For competition concerns to arise, merging parties need the ability and incentive to harm rivals.<sup>19</sup>

70. In November 2008, AMEC was part of a consortium which was awarded the Parent Body Organisation (**PBO**) contract to manage Sellafield Limited,<sup>20</sup>

---

<sup>18</sup> The OFT was unable to tell from the responses it received to its market testing if third parties considered areas of overlap between the parties to be areas in which the specialist skills were scarce.

<sup>19</sup> *Merger Assessment Guidelines*, Section 5.6.

<sup>20</sup> The PBO is Nuclear Management Partners Ltd, the consortium consisting of URS' Washington Division, AMEC and AREVA NC. The OFT assessed this JV at the time – see ME/3858/08:

the Site Licence Company for the Sellafield nuclear site. The role of a PBO is to provide key managers to the Site Licence Company to provide innovation and strategic direction, including the allocation of around £1 billion of spend per annum allocated to the Sellafield site by the NDA. Therefore, the Transaction gives rise to a potential vertical relationship, and two competitors indicated that they considered supplier involvement in the operation of PBOs to have a detrimental impact on downstream competition, as ESRC competes for contracts awarded by PBOs.

71. The OFT understands that, as the funds which are dispersed through Sellafield Ltd are public funds, that Public Procurement regulations apply to the majority of procurement for nuclear services. Accordingly, competitive tender processes are run both for service framework agreements and for smaller one-off projects. Where projects are of sufficient scale, they are advertised in the Official Journal of the European Union (**OJEU**).
72. The OFT has not found evidence that AMEC has benefited in the downstream market for the supply of nuclear services from being a member of the Sellafield PBO since its inception. Moreover, the OFT is not aware of any evidence which would support a potential competitor foreclosure theory of harm in respect of any nuclear service. In any event, a number of alternate customers, in which AMEC takes no part in the running of, exist in the market.
73. Accordingly, the OFT considers that there is no realistic prospect that AMEC would have the ability to foreclose rivals.

## **CONCLUSION ON VERTICAL EFFECTS**

74. The OFT does not believe there is a realistic prospect of anti-competitive vertical effects arising as a consequence of the Transaction.

---

*Anticipated contract award to Nuclear Management Partners Limited as the Parent Body Organisation for Sellafield Limited, October 2008.*

## ASSESSMENT

75. The OFT's market testing revealed that there was sufficient evidence to suggest that the parties' share of supply in the Tier 2 civil or defence sectors is not met. However, in relation to the Tier 3 civil and defence sectors, third parties provided a range of estimates of the total size of the market which indicated that the parties' share of supply does exceed 25 per cent. Accordingly, the OFT considers that it is or may be the case that the Transaction has resulted in the creation of a relevant merger situation.
76. The OFT has undertaken its substantive assessment in relation to the supply of nuclear services, segmenting by the civil and defence sectors and further segmenting by Tier 1, Tier 2 and Tier 3 service types. The OFT has taken a cautious approach of adopting a geographic frame of reference of the UK. However, given the lack of competition concerns, it has not been necessary for the OFT to conclude on either the product or geographic markets.
77. AMEC claims that its post-merger share of supply in the nuclear services market is small – less than 10 per cent combined in the Tier 2 and Tier 3 civil and defence sectors. However, as mentioned above, the OFT received evidence from third parties which supported that the parties had a share well in excess of 25 per cent in Tier 3 civil and defence sectors. Further, for reasons outlined in the decision, the OFT did not place weight on the market shares but realised that they can be indicative of the extent of presence in a market. As such, the OFT considered the extent of closeness of competition between the parties by reference to bidding data and other qualitative evidence on pre-merger rivalry.
78. In considering closeness of competition, the OFT's market testing suggested that the parties do not appear to be close competitors. Third parties supported this in respect of the defence sector. In relation to the civil sector, specifically, the provision of safety case assessment services, whilst third parties considered this to be an area where the parties had the greatest overlap in service offering, there was, in general, limited concern amongst third parties in relation to the impact of the Transaction for these services, particular from customers. Moreover, some third parties were able to identify a number of alternate providers. Further, whilst the OFT is unable to place significant emphasis on market shares in its substantive

assessment in this case, the bidding data provided by the parties does go some way to establishing that the parties are not close competitors. This is on the basis that they seemed to bid for either different contracts, or different parts of the same contracts. Accordingly, the OFT considers that there is no realistic prospect of a substantial lessening of competition, even when considering the main area of overlap alone (provision of safety case assessment services).

79. Whilst the OFT is not required to reach a decision on barriers to entry or expansion, third parties noted that expansion was relatively easier than de novo entry, particularly in relation to attempts of new entry for defence and large services contracts. However, the OFT notes that the barriers to entry and expansion may vary depending on the level of nuclear specialism of a particular service. Further, the OFT understands that the size of the nuclear services market in the UK is likely to increase in the short- to medium-term, meaning that expansion in supplier opportunities may attract new entrants to the UK market.
80. In relation to buyer power, no comment was provided by AMEC on the extent to which there is countervailing buyer power. Further, third parties expressed mixed views. However, given the lack of competition concerns, the OFT is not required to reach a view on buyer power.
81. The OFT considered whether vertical effects would result from the Transaction on the basis of a potential vertical relationship existing, and the fact that two competitors indicated that they considered AMEC's involvement in the operation of the Sellafield PBO to have a detrimental impact on downstream competition, as ESRC competes for contracts awarded by PBOs. However, the OFT does not believe that there is a realistic prospect of anti-competitive vertical effects arising given that the public funds controlled by the Sellafield PBO are subject to the Public Procurement regulations, and competitive tender processes are also advertised in the OJEU. Moreover, the OFT has found no evidence that AMEC has benefited in the downstream market for the supply of nuclear services from being a member of the Sellafield PBO since its inception, nor that there is any evidence indicating that a potential competitor foreclosure theory of harm in respect of any nuclear service exists. In any event, a number of alternate customers, in which AMEC takes no part in the running of, exist in the market.

82. Consequently, the OFT does not believe that it is or may be the case that the Transaction has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

83. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.