



## MEDIA RELEASE

30 July 2018

### CCCS ENDS ASSESSMENT OF MARITIME PRODUCTS MERGER AFTER PARTIES ABANDON MERGER

1. The Competition and Consumer Commission of Singapore (“**CCCS**”) has ended its assessment of the proposed acquisition by Wilhelmsen Maritime Services AS (“**WMS**”) of sole control over Drew Marine’s technical solutions, fire, safety and rescue businesses (“Drew Marine Technical Solutions” or “**DMTS**”)<sup>1</sup> (WMS and DMTS collectively the “**Parties**”) (the “**Proposed Transaction**”), after the Parties abandoned the Proposed Transaction.

2. WMS and DMTS overlap in the supply of marine chemicals (marine cleaning chemicals, marine water treatment chemicals and marine fuel oil treatment chemicals), marine gases (marine welding gases and marine refrigerant gases) and marine welding equipment. On 10 August 2017, WMS submitted an application for a decision<sup>2</sup> by CCCS on whether the Proposed Transaction would infringe section 54 of the Competition Act (Cap. 50B) (the “**Act**”), which prohibits anti-competitive mergers.<sup>3</sup>

3. On 25 May 2018, CCCS issued a provisional decision to the Parties, upon making a provisional finding that the Proposed Transaction was likely to result in a substantial lessening of competition in the market for the supply of marine water treatment chemicals (including ancillary materials and services)<sup>4</sup> in Singapore, thereby infringing section 54 of the Act. This provisional decision followed CCCS’s in-depth review of the Proposed Transaction, and was based on information furnished by the Parties and third-party feedback, in the Phase 1 and Phase 2 reviews. CCCS also cooperated with the US Federal Trade Commission (“**FTC**”) in the course of reviewing the Proposed Transaction.

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<sup>1</sup> Drew Marine is comprised of Drew Marine Group Coöperatief U.A. and Drew Marine Partners L.P.

<sup>2</sup> For more information on the application and CCCS’s Phase 1 review, please refer to CCCS’s [media release](#) dated 9 October 2017 available at CCCS’s website.

<sup>3</sup> Section 54 of the Competition Act (Chapter 50B) prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore.

<sup>4</sup> Marine water treatment chemicals are chemicals used to treat and protect vessels’ on-board water systems, and are typically used at every key point in the on-board water lifecycle (i.e. from intake, to water production, through water utilization and eventually discharge). Ancillary materials and services are also provided to customers together with the supply of such chemicals, which include product data sheets, safety data sheets, test kits, software for storing and reporting of test results, test logs and equipment, and training of crews and advice on usage of these products.

4. On 23 July 2018, WMS withdrew its application for a decision by CCCS. WMS's withdrawal of its application was made after the US District Court for the District of Columbia granted a preliminary injunction (on the application of the FTC) against the Proposed Transaction. The FTC had earlier filed a complaint charging that the Proposed Transaction would violate US antitrust laws by significantly reducing competition in the market for marine water treatment chemicals and services used by global fleets. The preliminary injunction was to temporarily block the Proposed Transaction, pending the outcome of an administrative trial to determine whether the Proposed Transaction would violate US antitrust laws.<sup>5</sup> Consequently, on 22 July 2018, WMS announced that the Parties have agreed to abandon the Proposed Transaction.<sup>6</sup>

5. In view of the termination of the Proposed Transaction, and WMS's withdrawal of its pending notification, CCCS has ended its assessment of the Proposed Transaction.

### **CCCS's Provisional Decision of 25 May 2018**

6. CCCS provisionally found that the Parties' combined market share in the supply of marine water treatment chemicals in Singapore is substantial, with the next largest competitor having less than one-twentieth of the Parties' combined market share. CCCS also made a provisional finding that the Parties are each other's closest competitor, that there would likely not be sufficient competitive pressure from existing or potential competitors, and customers would likely not be able to counteract the anti-competitive effects of the Proposed Transaction. This could lead to higher prices and a reduction in choice and quality of supply of marine water treatment chemicals for customers that require deliveries in Singapore.

7. The FTC had also raised similar competition concerns arising from the Proposed Transaction, specifically in the market for marine water treatment chemicals and services.

8. In its provisional decision, CCCS also found that a price cap commitment proposed by WMS would not be appropriate or sufficient to address competition concerns arising from the Proposed Transaction.

9. More information on CCCS's Statement of Decision (Provisional) of 25 May 2018 can be found in the [media release](#) dated 25 May 2018 available at CCCS's website.

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<sup>5</sup> The FTC had issued an administrative complaint charging that the Proposed Transaction would violate US antitrust laws by significantly reducing competition in the market for marine water treatment chemicals and services used by global fleets, with an administrative trial to be subsequently heard before a judge who would make a decision as to whether the Proposed Transaction would violate US antitrust laws. Concurrently, the FTC also applied for the preliminary injunction to prevent the Parties from consummating the merger, and to maintain the status quo pending the outcome of the administrative trial. This preliminary injunction to temporarily block the Proposed Transaction was granted by the US District Court for the District of Columbia on 21 July 2018.

<sup>6</sup> See WMS's press release dated 22 July 2018 at <https://www.wilhelmsen.com/media-news-and-events/press-releases/2018/wilhelmsen-abandons-acquisition-of-drew-marine-following-us-ruling/>

10. For more information on the merger review process in Singapore, please refer to **Annex 1**.

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### **About The Competition and Consumer Commission of Singapore**

The Competition and Consumer Commission of Singapore (“CCCS”) is a statutory board of the Ministry of Trade and Industry. CCCS administers and enforces the Competition Act (Cap. 50B) which empowers CCCS to investigate and adjudicate anti-competitive activities, issue directions to stop and/or prevent anti-competitive activities and impose financial penalties. CCCS is also the administering agency of the Consumer Protection (Fair Trading) Act (Cap. 52A) or CPFTA which protects consumers against unfair trade practices in Singapore. Our mission is to make markets work well to create opportunities and choices for business and consumers in Singapore.

For more information, please visit [www.cccs.gov.sg](http://www.cccs.gov.sg)

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## **Annex 1**

### **About the Section 54 Prohibition under the Competition Act & Merger Procedures**

Section 54 of the Act prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition in Singapore.

CCCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless:

- The merged entity has/will have a market share of 40% or more; or
- The merged entity has/will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms is 70% or more.

Merging entities are not required to notify CCCS of their merger but they should conduct a self-assessment to ascertain if a notification to CCCS is necessary. If they are concerned that the merger has infringed, or is likely to infringe, the Act, they should notify their merger to CCCS. In such cases, CCCS will assess the effect of the merger on competition and decide if the merger has resulted, or is likely to result, in a substantial lessening of competition (“**SLC**”) in Singapore.

Separately, CCCS has the ability to conduct an investigation into an un-notified merger if there are reasonable grounds for suspecting that the merger infringes section 54 of the Act. In the event CCCS finds that a merger situation has resulted or is expected to result in an SLC, CCCS has powers to give directions to remedy the SLC. For example, CCCS can require the merger to be unwound or modified to address or prevent the SLC, as the case may be. CCCS may also consider issuing interim measures prior to the final determination of the investigation.

### **Phase 1 and Phase 2 Merger Review**

A Phase 1 review entails a quick review and allows merger situations which do not raise competition concerns under the section 54 prohibition to proceed. CCCS expects to complete a Phase 1 review within 30 business days. By the end of this period, CCCS will determine whether to issue a favourable decision and allow the merger situation to proceed. If CCCS is unable, at the end of the 30-day period, to conclude that the merger situation will not result in a substantial lessening of competition, CCCS will inform the merger parties and the merger parties may file Form M2. Upon receipt of Form M2, CCCS will proceed to a Phase 2 review.

A Phase 2 review entails a more detailed and extensive examination of the merger situation. While the principles of substantive assessment are the same, CCCS will require access to more extensive and detailed information regarding the merger parties and the markets in question.

As the Phase 2 review is more complex, CCCS will endeavour to complete a Phase 2 review within 120 business days.

## **Commitments**

Section 60A of the Act states that CCCS may, at any time before making a decision as to whether the section 54 prohibition has been or will be infringed, accept commitments that remedy, mitigate or prevent the substantial lessening of competition or any adverse effect arising from the merger situation. Where CCCS has accepted a commitment, CCCS will make a favourable decision.

Further details can be found in the *CCCS Guidelines on Merger Procedures 2012*.

For more information, please visit [www.cccs.gov.sg](http://www.cccs.gov.sg)