**Section 57 of the Competition Act (Cap. 50B)**

**Grounds of Decision issued by the Competition and Consumer Commission of Singapore**

**In relation to the Proposed Acquisition by Fresenius Medical Care Singapore Pte. Ltd. of 100 per cent. of the issued share capital in RenalTeam Pte. Ltd.**

**29 May 2020**

**Case number: CCCS/400-140-2020-003**

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## I. INTRODUCTION

1. On 17 March 2020, Fresenius Medical Care Singapore Pte. Ltd. ("**FMC SG**") filed a notification pursuant to section 57 of the Competition Act (Cap. 50B) ("**the Act**") for a decision by the Competition and Consumer Commission of Singapore ("**CCCS**") as to whether the proposed acquisition of 100% of the issued share capital in RenalTeam Pte. Ltd. ("**RT**") by FMC SG (each a "**Party**" and collectively, "**the Parties**") ("**the Proposed Transaction**"),[1] if carried into effect, will infringe section 54 of the Act ("**the section 54 prohibition**").

2. In reviewing the Proposed Transaction, in addition to conducting a public consultation, CCCS sought third party feedback from 36 third parties in total, comprising providers of haemodialysis ("**HD**") services to End Stage Renal Disease ("**ESRD**") patients, including private sector providers, voluntary welfare organisations ("**VWOs**") and restructured hospitals; customers of the Parties for HD services provided on an outsourced basis; competitors to FMC SG in the supply of dialysis products and consumables; and 3 government agencies. 2 additional third parties submitted feedback in response to the public consultation.

3. At the end of the public consultation process, and after evaluating all available information including FMC SG's submissions and feedback by third parties, CCCS concludes that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

## II. THE PARTIES

### (A) The Acquirer

*FMC SG*

4. FMC SG is a wholly-owned subsidiary of Fresenius Medical Care AG & Co. KGaA ("**FMC KGaA**"). FMC KGaA is the holding company of the FMC group of companies ("**FMC Group**") which is in the business of providing dialysis products and services in around 150 countries worldwide through a global network of over 4,000 dialysis clinics and 42 production sites, as well as research and development activities in relation to dialysis products. The FMC Group has the following subsidiaries and affiliated entities incorporated in Singapore: ARC Kidney Dialysis Pte. Ltd.; Asia Renal Care (Katong) Pte. Ltd.; Asia Renal Care

[1] Paragraph 1.1 of Form M1.

Mt Elizabeth Pte. Ltd.; Asia Renal Care (SEA) Pte. Ltd.; and Kidney Therapy Centre Pte. Ltd.[2]

5. FMC SG, its subsidiaries and its associated entities provide goods and services in Singapore primarily under the brand names "Fresenius Medical Care Singapore" and "Fresenius Kidney Care".[3]

6. In terms of goods and/or services sold in Singapore, FMC SG submitted that the FMC Group (including FMC SG, and its subsidiaries and affiliated entities) provides:[4]

   (a) HD services and peritoneal dialysis ("**PD**") services to ESRD patients through 28 dialysis centres operated by the FMC Group;
   (b) HD services, on an outsourced basis, in 3 dialysis centres operated by third party service providers;
   (c) Acute dialysis services to inpatients in 3 private hospitals[5];
   (d) Management services to 1 third party service provider[6]; and
   (e) Dialysis products and consumables[7].

7. The total (group) worldwide revenue of FMC SG for the financial year ended 31 December 2018 was €16,547 million (approximately S$24,844 million). The total (group) Singapore revenue of FMC SG for the financial year ended 31 December 2018 was [✂].[8]

## (B) The Target

*RT*

[2] Paragraph 10.1 of Form M1.
[3] Paragraphs 7.2, 10. 3 and 10.5 of Form M1.
[4] Paragraph 10.9 and 14.1 of Form M1.
[5] Paragraph 4.3.1 of FMC SG's response dated 23 April 2020 to CCCS's RFI dated 16 April 2020.
[6] Management services include human resources support such as payroll, recruitment and advising on human resources management, clinic operations management such as overseeing nursing performance, establishing standard operating procedures with medical directors, sourcing consumables for dialysis treatment and procuring cleaning services for the clinic, and account services such as bookkeeping, producing monthly accounting reports, and working with external auditors and tax consultants to produce annual reports and file taxes. FMC SG further submitted that [✂]. Paragraphs 10.12 and 24.31 of Form M1.
[7] Dialysis products and consumables include dialysis machines, dialysers, filters, and disposables for chronic HD, dialysis products for at-home HD and PD treatment, acute dialysis products and disposables, dialysis equipment (i.e. medical treatment chairs), information technology solutions for dialysis treatment, water treatment products and services for dialysis therapy and analysis systems for assessing the conditions of patients. Paragraph 14.1 of Form M1.
[8] Paragraph 13.1 of Form M1.

8. RT is a wholly-owned subsidiary of RenalTeam Holdings Pte. Ltd. ("**RTH**"). As at the time of signing of the Proposed Transaction, RT does not hold any interest in any entities. RT provides its services under the brand name "RenalTeam".[9]

9. In terms of goods and/or services sold in Singapore, FMC SG submitted that RT provides:[10]

   (a) HD services to ESRD patients through 8 dialysis centres operated by RT; and
   (b) HD services, on an outsourced basis, in 1 dialysis centre operated by a third party service provider.

10. FMC SG also submitted that [✂].[11]

11. The total Singapore revenue of RT for the financial year ended 31 December 2018 was [✂].[12]

## III. THE PROPOSED TRANSACTION

*Nature of the Proposed Transaction*

12. Based on the Share Purchase Agreement ("**SPA**") entered into between FMC SG and RTH on 9 March 2020, the Proposed Transaction relates to an acquisition by FMC SG of 100 per cent. of the issued share capital in RT, and accordingly all of the businesses of RT.[13] The aggregate consideration for the Proposed Transaction is [✂].[14]

13. The Proposed Transaction had an initial anticipated closing date of [✂], which was later extended to [✂].[15] The completion of the Proposed Transaction is subject to the conditions precedent set out in Clause 4.1 of the SPA, which includes [✂].[16]

*Rationale for the Proposed Transaction*

[9] Paragraphs 7.3 and 10.4.1 of Form M1.
[10] Paragraphs 10.8, 10.13 and 14.2 of Form M1.
[11] Paragraph 9.1 of Form M1. [✂]
[12] Paragraph 13.2 of Form M1.
[13] Paragraph 11.4 of Form M1.
[14] Paragraph 11.5 of Form M1 and Clause 3 of the SPA.
[15] Paragraph 2.1 of Letter Agreement to the Share Purchase Agreement from FMC SG to RT dated 6 May 2020.
[16] Clause 4.1.1 of the SPA.

14. FMC SG submitted that [✂]. The Proposed Transaction would allow [✂].[17]

15. FMC SG further submitted that the Proposed Transaction will enable FMC SG to [✂].[18]

*Merger under Section 54 of the Act*

16. Based on FMC SG's submissions regarding the structure of the Proposed Transaction, and the fact that FMC SG is acquiring 100 per cent. of the issued share capital in RT, CCCS is of the view that the Proposed Transaction constitutes a merger falling under section 54(2)(b) of the Act.

## IV. COMPETITION ISSUES

17. FMC SG submitted that the Parties primarily overlap in the provision of HD services to ESRD patients in Singapore. Specifically, both Parties provide:[19]

    (a) HD services to ESRD patients, through dialysis centres owned and operated by each Party; and
    (b) HD services, on an outsourced basis ("**outsourced HD services**"), in dialysis centres operated by third party service providers ("**Outsourced Clinics**").

18. Haemodialysis, or HD, is used to treat patients requiring renal replacement therapy on a chronic basis to treat ESRD (which is stage 5 of chronic kidney disease ("**CKD**")).[20] Other than HD, ESRD may also be treated by other forms of renal replacement therapy such as peritoneal dialysis, or PD, which the FMC Group also provides in Singapore.[21] Whilst FMC SG provides PD services, RT currently provides only conventional HD treatment services, and does not provide any other forms of treatment for CKD such as PD.[22]

[17] Paragraph 12.2 of Form M1.
[18] Paragraphs 12.3 and 12.4 of Form M1.
[19] Paragraphs 14.1, 14.2 and 15.1 of Form M1.
[20] Paragraph 18.10 of Form M1; and Paragraph 27.1 of FMC SG's response dated 23 April 2020 to CCCS's RFI dated 16 April 2020.
[21] Paragraphs 14.1 and 19.1 of Form M1.
[22] Paragraphs 11.1 and 11.3 of FMC SG's response dated 11 May 2020 to CCCS's RFI dated 28 April 2020.

19. FMC SG also submitted that it is a vertically-integrated provider of both HD products and consumables, as well as HD services, and that post-Proposed Transaction, [✂].[23]

*CCCS's assessment*

20. In evaluating the potential impact of the Proposed Transaction, CCCS has accordingly considered whether the Proposed Transaction will lead to non-coordinated, coordinated and/or vertical effects that would substantially lessen competition, in relation to the provision of HD services, including outsourced HD services, and the supply of HD products and consumables in Singapore.

## V. COUNTERFACTUAL

21. In the absence of market feedback or evidence suggesting otherwise, CCCS is of the view that the appropriate counterfactual is the prevailing conditions of competition prior to the Proposed Transaction, i.e., FMC SG and RT continue to compete independently in the provision of HD services to ESRD patients, and the provision of outsourced HD services to Outsourced Clinics, in Singapore.

## VI. RELEVANT MARKETS

### (A) Overview of dialysis services and dialysis products

22. According to FMC SG, there are 2 forms of dialysis treatments for ESRD patients, namely haemodialysis (HD, or commonly known as blood dialysis) and peritoneal dialysis (PD, or commonly known as water dialysis):[24]

(a) **HD treatment**:[25] A patient's blood is filtered through a dialysis machine, which acts as an artificial kidney and removes waste products and excess water in the patient's blood. The purified blood is then returned back into the patient's body. HD treatment is typically administered at dialysis centres. HD is typically performed 3 times a week, with each session lasting about 4 hours, depending on the patient's body size and medical condition.

[23] Paragraphs 36.1 and 36.3 of Form M1.
[24] Paragraph 19.1 of Form M1.
[25] Paragraph 19.2 of Form M1.

(b) **PD treatment**:[26] A special sterile fluid is introduced into the abdomen through a permanent tube that is placed in the peritoneal cavity. The fluid circulates through the abdomen to draw impurities from surrounding blood vessels in the peritoneum, which is then drained from the body. According to FMC SG, PD can be carried out at home, at work, or on trips, but requires careful supervision.

23. According to FMC SG, there are 3 main categories of HD service providers in Singapore, namely (a) private sector service providers (e.g. FMC SG and RT); (b) restructured hospitals and joint ventures ("**JVs**") between restructured hospitals and private service operators; and (c) VWOs (e.g. National Kidney Foundation ("**NKF**") and Kidney Dialysis Foundation ("**KDF**")).[27]

24. Based on FMC SG's submissions, HD service providers offer HD services either directly through their own dialysis centres/clinics, or on an outsourced basis at third party clinics.[28]

25. In the latter situation, according to FMC SG, third party owners or operators of dialysis centres/clinics (i.e. Outsourced Clinics) may choose to source for an external HD service provider to offer HD services, on an outsourced basis, to ESRD patients at their clinic.[29] Examples of such Outsourced Clinics that may choose to use an outsourced HD service provider include VWOs and public hospitals and their affiliates.[30] According to FMC SG, the owner/operator of the Outsourced Clinic would determine their own requirements for the services to be provided, as part of its tender specifications when it calls for tenders for outsourced HD service providers.[31] This includes the owner/operator's decisions on the scope of HD services to be provided to patients, the number of dialysis stations to be set up in the clinic, and the number of renal nurses to be staffed at the clinic.[32]

26. To provide HD services, HD service providers will need to source for dialysis products and consumables such as dialysis machines, dialysers, cardiac monitoring devices, intubation equipment and oxygen supply.[33] These products

[26] Paragraph 19.3 of Form M1.
[27] Paragraph 24.1 of Form M1.
[28] Paragraph 19.5 of Form M1.
[29] Paragraph 19.5 of Form M1.
[30] Paragraph 18.8 of Form M1.
[31] Paragraph 1.2 of FMC SG's response dated 2 April 2020 to CCCS's RFI dated 25 March 2020.
[32] Paragraph 1.1 of FMC SG's response dated 7 April 2020 to CCCS's RFI dated 3 April 2020.
[33] Paragraph 18.6 of Form M1.

and consumables are commonly purchased from medical equipment distributors or directly from manufacturers.[34] Some of the manufacturers (e.g. FMC SG and B.Braun Melsungen AG ("**B.Braun**")) may be vertically-integrated providers which supply both HD products and consumables as well as HD services in Singapore.

## (B) Product Market

(i) Provision of dialysis treatment services

27. **Provision of outpatient HD services to ESRD patients.** Although FMC SG submitted that a broader market definition would include the provision of PD services in Singapore,[35] and that VWOs pose a strong competitive constraint on private service providers,[36] CCCS has considered that (i) PD services are unlikely to be in the same relevant market as HD services, and (ii) VWOs do not fall within the same relevant market as private sector providers.

28. *PD services unlikely to be in same market as HD services*. FMC SG acknowledged that medical reasons may affect the substitutability between HD and PD treatments in practice, as there are some patients who may not be suitable for PD or HD treatments and therefore can only take up HD or PD treatment respectively.[37]

29. Third party feedback also corroborated this. Third parties generally do not view PD as a substitute generally for HD treatment. There are patients for whom PD treatment is not suitable, due to factors such as medical conditions (e.g. patients with prior major abdominal surgery) and lifestyle considerations (e.g. patients who may not have family support or a caregiver to assist them with PD treatment at home). FMC SG's submissions[38] and third party feedback also indicates that the proportion or number of HD patients who have switched to PD treatment is low.

30. Even for patients for whom PD treatment is suitable, PD treatment may not remain as a suitable treatment option after a number of years. In CCCS's 2012

[34] Paragraph 18.6 of Form M1
[35] Paragraph 20.13 of Form M1.
[36] Paragraph 20.3 of Form M1.
[37] Paragraph 10.1 of FMC SG's response dated 2 April 2020 to CCCS's RFI dated 25 March 2020.
[38] Paragraph 6.2 of FMC SG's response dated 23 April 2020 to CCCS's RFI dated 16 April 2020; and Tab 2 of the Excel workbook submitted by FMC SG on 14 May 2020.

decision of *Asia Renal Care/Orthe*, CCCS found that there are patients who may have to switch from PD to HD treatment due to infection/inflammation of the peritoneal membrane (i.e., peritonitis); as well as when the peritoneal membrane deteriorates after use over a period of time and ceases to have the properties that enable PD.[39] In this regard, FMC SG submitted that (i) peritonitis remains a potential complication from PD treatment to-date[40] (although FMC SG is of the view that such complication is preventable / controllable to a large extent by good hygiene practices)[41]; and (ii) for a patient undergoing PD treatment, the peritoneal membrane will stay functional to allow for PD treatment only for a period of 5 to 7 years typically (with variation on a case-by-case basis).[42] Third parties also agree that there are PD patients who have to switch back to HD treatment, or switch to other measures (e.g. kidney transplant), due to such infection or after using PD for a number of years.

31. <u>*VWOs not in the same market as private sector providers*</u>. The majority of third parties do not consider VWOs as competitors to private sector providers. This is in particular because patients have to pass the means testing before they can qualify for, and are able to switch to, receiving subsidised dialysis treatment at a VWO.

32. Third parties indicated that they did not observe any recent developments in the market, which make it generally easier for most currently non-subsidised patients to qualify for subsidised treatment, and thus switch from private sector providers to VWOs.

33. Some third parties highlighted that there may be situations where patients who have passed the means testing criteria are referred to receive dialysis treatments at private dialysis centres instead, as they are unable to receive dialysis treatment directly at a VWO (e.g. because they are assessed to be medically unsuitable to receive (or continue receiving) dialysis treatment at the VWOs). Firstly, CCCS notes that such means-qualifying patients may not be able to switch to VWOs, either temporarily or at all. Secondly, given that third party feedback indicates that these patients' HD treatments are still subsidised partially or fully by VWOs whilst they are receiving treatment at the private dialysis centre, CCCS has assessed that VWOs' subsidised treatment rates are unlikely to be placing

[39] Paragraph 27 of *CCS 400/008/12 – Proposed Acquisition by Asia Renal Care (SEA) Pte Ltd of Orthe Pte Ltd* ("***Asia Renal Care/Orthe***").
[40] Paragraph 10.6 of FMC SG's response dated 2 April 2020 to CCCS's RFI dated 25 March 2020
[41] Paragraph 10.6 and 10.7 of FMC SG's response dated 2 April 2020 to CCCS's RFI dated 25 March 2020.
[42] Paragraph 10.9 of FMC SG's response dated 2 April 2020 to CCCS's RFI dated 25 March 2020.

competitive pressure or constraint on private dialysis centres in this respect, as submitted by FMC SG.[43] Third parties further noted that some of these patients may be placed in private dialysis centres on a temporary basis. Whilst CCCS notes FMC SG's submissions on their internal patient records that shows the numbers and percentages of FMC SG's recurring HD patients[44] who have switched to VWOs,[45] CCCS also notes that such data may include subsidised patients who had been placed in a FMC SG dialysis centre temporarily, and that FMC SG was unable to provide a breakdown of such patients.[46] In this context, CCCS is of the view that the internal data provided by FMC SG on the switching by FMC SG's recurring HD patients to VWOs, does not support FMC SG's submission that VWOs pose a competitive constraint on private service providers such as FMC SG.

34. *Restructured hospitals (including JVs between restructured hospitals and private sector providers) may compete for non-subsidised outpatients*. CCCS notes that third party feedback on balance indicates that restructured hospital outpatient HD facilities, and JVs between restructured hospitals and private sector providers, may also serve non-subsidised HD outpatients, and in this regard are considered to be similar to a private sector HD service provider. CCCS considers that for the purpose of assessing the Proposed Transaction, the relevant product market includes outpatient HD services provided to ESRD patients by restructured hospitals, and JVs between restructured hospitals and private sector providers, insofar as their outpatient HD services are provided to non-subsidised patients on a long-term basis, and are open to any such outpatient.

35. In view of the above, CCCS is of the view that the relevant product market is the provision of outpatient HD services to ESRD patients by private sector providers and restructured hospitals (including JVs between restructured hospitals and private sector providers).[47]

36. **Provision of outsourced HD services to Outsourced Clinics is a separate product market.** CCCS has considered that the provision of outsourced HD services to Outsourced Clinics does not fall within the same relevant product

[43] Paragraphs 20.7 and 20.8 of Form M1.
[44] Referring to outpatients receiving HD treatment at FMC SG-owned clinics regularly for at least 1 month.
[45] Paragraph 10.5 of FMC SG's response dated 23 April 2020 to CCCS's RFI dated 16 April 2020; and Tab 2 of the Excel workbook submitted by FMC SG on 14 May 2020.
[46] Paragraph 9.1 of FMC SG's response dated 23 April 2020 to CCCS's RFI dated 16 April 2020; and Paragraphs 2.1 and 12.1 of FMC SG's response dated 11 May 2020 to CCCS's RFI dated 28 April 2020.
[47] Restructured hospitals, and JVs between restructured hospitals and private sector providers, are included insofar as their outpatient HD services are provided to non-subsidised patients on a long-term basis, and are open to any such outpatient.

market as the provision of HD services to ERSD patients through dialysis centres owned and operated by the service provider. The reasons are set out below:

(a) Firstly, the nature of services and customers of outsourced HD services are different. The customers which procure such services are not the ESRD patients, but the third party Outsourced Clinics, such as VWOs and restructured hospitals. The scope and nature of services which outsourced HD service providers supply to its customers, as submitted by FMC SG, entail not only the provision/administering of HD services and ancillary medical treatments to ESRD patients, but also involves the provision of nursing staff for administering the HD treatment, and the provision of the necessary HD equipment and consumables, as required by the owner and operator of the Outsourced Clinics.[48] Third party feedback also corroborated this understanding.

(b) Secondly, as submitted by FMC SG, competitive decisions pertaining to the provision of HD services to the end-customers (i.e. ESRD patients) at the Outsourced Clinics – such as the nature and quality of services to be offered at the Outsourced Clinic, fees and charges to be paid by patients at the Outsourced Clinics, and the clinic's capacity – are made by the third party Outsourced Clinics, rather than the outsourced HD service providers.[49] Indeed, the agreed fees/treatment price to be paid by the Outsourced Clinic to the outsourced HD service provider, [✂] the fees which ERSD patients may pay to the Outsourced Clinic for the HD services. For example, for VWOs such as [✂]'s Outsourced Clinics, the ESRD patients would pay subsidised rates based on means testing, which [✂] the treatment price paid by the VWO to the outsourced HD service provider.[50] Given this, CCCS does not agree with FMC SG's submission that the Outsourced Clinic merely acts as an aggregator of demand of individual ESRD patients.[51]

[48] Paragraph 1.3 of FMC SG's response dated 7 April 2020 to CCCS's RFI dated 3 April 2020.
[49] Paragraph 1.2 of FMC SG's response dated 7 April 2020 to CCCS's RFI dated 3 April 2020.
[50] FMC SG submitted that its fees charged to [✂], one of its customers for outsourced HD services, are [✂] per HD treatment. However, at [✂] dialysis clinics generally, patients of [✂] may pay no more than S$400 in monthly out-of-pocket expenses (in 1 month, a patient typically undergoes around 12 sessions of HD treatment). Paragraph 1.9 of FMC SG's response dated 2 April 2020 to CCCS's RFI dated 25 March 2020; and Paragraph 2.2 of FMC SG's response dated 7 April 2020 to CCCS's RFI dated 3 April 2020.
[51] Paragraph 20.11.2 of Form M1; and Paragraph 1.4 of FMC SG's response dated 2 April 2020 to CCCS's RFI dated 25 March 2020.

37. In view of the above, CCCS is of the view that the relevant product market is the provision of outsourced HD services to third party dialysis centres (i.e. Outsourced Clinics).

38. For completeness, CCCS notes that, in CCCS's 2010 decision of *FMC KGaA/ARC*[52], CCCS had not concluded whether the provision of outsourced HD services (or management services for dialysis centres) is in a separate market or the same market as the provision of dialysis services to patients.[53] CCCS further notes that, even though a market definition for outsourced HD services (or management services for dialysis centres) was not concluded, CCCS had nevertheless proceeded to specifically assess the competition impact of the merger vis-à-vis said services in *FMC KGaA/ARC*.

(ii) Supply of dialysis products and consumables

39. In respect of the supply of HD products and consumables, based on FMC SG's submissions and third party feedback received, CCCS is of the view that it is not necessary to conclude on the precise definition of the relevant upstream product market, as it considers that the Proposed Transaction is unlikely to give rise to competition concerns on vertical effects, even under a narrower product market definition (e.g. market for specific HD products and/or HD consumables). For the purpose of assessing the Proposed Transaction, CCCS considered whether any vertical effects (e.g. foreclosure concerns for downstream competitors) may arise in respect of HD products and consumables as a whole, as well as specific HD products and HD consumables.

## (C) Geographic Market

(i) Provision of dialysis treatment services – outpatient HD services to ESRD patients

40. In CCCS's Post-Action Market Study on Merger Clearance in the Dialysis Market (26 April 2016) ("**2016 Post-Action Market Study**"), CCCS had found that there were dialysis centres which had most of their patients living around the vicinity of these centres.[54] In its current assessment of the Proposed Transaction, CCCS also received third party feedback that the location of the dialysis centre is one of the main factors taken into consideration by non-subsidised ESRD patients in deciding which dialysis centre to use. For the

[52] *CCS 400/005/10 – Proposed Acquisition by Fresenius Medical Care Beteiligungsgesellschaft mbH and Fresenius Medical Care AG & Co. KGaA of Asia Renal Care, Limited* ("***FMC KGaA/ARC***").
[53] Paragraph 26 of *FMC KGaA/ARC*.
[54] Paragraph 13 of the 2016 Post-Action Market Study.

purposes of assessing the current Proposed Transaction, CCCS requested for, and FMC SG provided, information on the residential postal codes of the Parties' patients, and a breakdown of the number and percentage of patients based on how far away they live from their dialysis centre (i.e. patient dispersion data), for each of the Parties' dialysis centres.

41. CCCS reviewed the patient dispersion data for the Parties' dialysis centres, in particular for each of the 8 RT owned and operated dialysis centres, as well as for FMC SG's dialysis centre(s) where they are located near a RT dialysis centre, and assessed that generally, most of the patients live around the vicinity of their dialysis centre.

42. Based on the locations of the RT owned and operated dialysis centres and the FMC SG owned and operated dialysis centres, CCCS identified a total of 7 areas where the Parties each have at least 1 dialysis centre close to each other. CCCS considers that in assessing the competition impact of the Proposed Transaction, the overlap between the Parties in each of these 7 areas would need to be examined to assess whether competition concerns may arise within any narrower geographic areas.

43. Reviewing the actual patient dispersion data for the Parties' dialysis centres that are near to each other, for each of these 7 areas, CCCS preliminarily identified a radial distance within which most of the Parties' patients at the said centres reside. CCCS highlights that radial distance is used here as a tool to preliminarily approximate the catchment area for the purposes of its assessment of the Proposed Transaction; and CCCS would further consider the scope of each catchment area on a case by case basis (e.g. a dialysis centre just outside the border of the geographical radius may be found to be potentially able to exercise competitive constraint on the Parties' dialysis centres within the catchment area due to a sizeable presence of the Parties' patients near that competing dialysis centre, and thus relevant for the competition assessment. Likewise, a dialysis centre within the catchment area may not be found to exercise competitive constraint on the Parties' dialysis centres within the catchment area if there is no or minimal presence of the Parties' patients near that dialysis centre).

44. Based on this, CCCS identified 7 individualised catchment areas, taking into account the actual patient dispersion data within each catchment area. CCCS undertook this approach in this case as it is possible to analyse competition conditions on an individualised catchment area basis (in view that there are only 7 such areas to consider).

45. Nonetheless, CCCS did not find it necessary to conclude on the precise definition of the geographic market, as it found that the Proposed Transaction is unlikely to lead to a substantial lessening of competition in the relevant product market identified, whether assessed on the basis of a Singapore-wide geographic market or a narrower geographic market (elaborated on below).

(ii) Provision of dialysis treatment services – outsourced HD services to Outsourced Clinics

46. CCCS is of the view that the geographic market for the provision of outsourced HD services to Outsourced Clinics is likely to be Singapore-wide. Given that the scope of outsourced HD services includes the administering of HD treatment and ancillary medical treatments, and the provision of nursing staff for the same, it is unlikely that such services could be provided by overseas service providers.

(iii) Supply of dialysis products and consumables

47. Based on FMC SG's submissions and third party feedback received, CCCS considers the geographic market for the provision of HD products and consumables to be Singapore.

**(D) CCCS's conclusion on market definition**

48. Given CCCS's assessment of the relevant product and geographic markets above, CCCS is of the view that the relevant markets for the competition assessment of the horizontal effects of the Proposed Transaction are:

(a) The market for the provision of outpatient HD services to ESRD patients by private sector providers and restructured hospitals (including JVs between restructured hospitals and private sector providers).[55]

For the purpose of the competition assessment of the Proposed Transaction vis-à-vis this relevant market, CCCS is of the view that such competition assessment is not affected by the precise definition of the geographic scope of the market, and therefore it is not necessary to conclude on this aspect. CCCS assessed this relevant market on a

[55] Restructured hospitals, and JVs between restructured hospitals and private sector providers, are included insofar as their outpatient HD services are provided to non-subsidised patients on a long-term basis, and are open to any such outpatient.

Singapore-wide basis as well as within the 7 narrower geographic areas identified; and

(b) The market for the provision of outsourced HD services to third party dialysis centres (i.e. Outsourced Clinics) in Singapore.

49. For the purpose of the competition assessment of the vertical effects of the Proposed Transaction, CCCS is of the view that such competition assessment is not affected by the precise definition of the market, and therefore it is not necessary to conclude on this. CCCS considered the market for the provision of HD products and consumables in Singapore, with further examination of whether any vertical effects may arise in respect of specific HD products and/or HD consumables.

## VII. MARKET STRUCTURE

### (a) Market Shares

(i) Provision of outpatient HD services to ESRD patients

50. Based on third party feedback and desktop research, CCCS notes that there are 2 other groups of dialysis clinics/centres which are owned and operated by private nephrologists, even though those dialysis centres may take on the same brand name(s) under the ARCA and/or Aegis groups.[56] CCCS refers to these 2 groups as Immanuel/Renal Life (II) and AKD (II). CCCS has therefore adjusted the market shares (by number of patients) submitted by FMC SG, to account for these 2 other groups being separate from the ARCA and/or Aegis groups.

51. Based on this, CCCS notes that, on a Singapore-wide basis, the Proposed Transaction involves the merging of the largest and third-largest competitors (i.e., FMC SG and RT respectively), with the combined market share of the merged entity at [50 - 60]% in 2018 (by number of patients). This exceeds CCCS's indicative thresholds for a merger situation that may raise competition concerns.[57] The post-Proposed Transaction CR3 is also significant, at [70 - 80]% in 2018.

[56] [✂].

[57] Paragraph 5.15 of *CCCS Guidelines on the Substantive Assessment of Mergers 2016*. CCCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless the merged entity has a market share of 40% or more, or the merged entity has a market share of between 20% to 40% and the post-merger combined market shares of the 3 largest firms ("**CR3**") is 70% or more.

52. ARCA, the second-largest competitor, only has a market share of [10 - 20]% in 2018, which is about [✂] of the merged entity's combined market shares of [50 - 60]% post-Proposed Transaction. However, CCCS notes that the market shares of FMC SG, the largest player, has decreased by around [0 - 10]% from 2016 to 2018. RT's market shares increased slightly by around [0 - 10]% over the same period while ARCA, the second-largest competitor, also gained market shares of around [0 - 10]% over the same period. There is also a slight increase observed in the market shares for AKD (II), by around [0 - 10]%, with another individual dialysis clinic gaining a 1% increase in market share. The market shares of most other competitors (including Aegis, the fourth largest competitor) remain relatively stable from 2016 to 2018.

53. CCCS also considered the market shares for each provider of HD services in each narrower individualised catchment area. As CCCS's identification of the individualised catchment areas differs from FMC SG's submissions on narrower geographic markets, CCCS undertook its own analysis of the market shares by number of patients seeking treatment at each dialysis centre, and the estimated capacity at each dialysis centre, based on the figures submitted by FMC SG.[58]

54. In each of these catchment areas, CCCS found that the combined market share of the merged entity exceeds CCCS's indicative thresholds of 40%, by number of patients and by capacity. Across the 7 catchment areas, the merged entity's combined market share ranges from [40 - 50]% to [60 - 70]%. In 4 of these 7 areas, it is noted that pre-merger, FMC SG already accounts for market shares in excess of 40%. By the number of dialysis centres, the merged entity accounts for between 2 to 11 dialysis centres per catchment area, with between 2 to 12 competing dialysis centres per catchment area, and the Parties' centres accounting for up to [50 - 60]% of dialysis centres in these catchment areas.

(ii) Provision of outsourced HD services to Outsourced Clinics

55. CCCS notes FMC SG's submission that, to the best of its knowledge, FMC SG and RT were [✂] in 2018 and 2019.[59] Third party feedback received by CCCS has [✂].

**(b) Barriers to Entry and Expansion**

(i) Provision of outpatient HD services to ESRD patients

[58] Annex 4 of FMC SG's response dated 18 May 2020 to CCCS's RFI dated 22 April 2020.
[59] Paragraph 10.1 of FMC SG's response dated 11 May 2020 to CCCS's RFI dated 28 April 2020.

56. A key barrier to entry and expansion most often raised by third parties is lack of trained manpower, which refers to nephrologists and trained dialysis nurses for dialysis centres. However, CCCS assesses that access to nephrologists and trained dialysis nurses is not a significant barrier to entry or expansion for private sector providers.

57. CCCS notes that the pertinent regulatory requirements for nephrologists and trained dialysis nurses have not changed since CCCS's decision in *Asia Renal Care/Orthe*.[60] In relation to the availability of nephrologists, CCCS notes that the number of nephrologists in the private sector is currently 24 (in 2018).[61] Based on the maximum number of dialysis patients that each nephrologist may oversee as a medical director of a dialysis centre, and the total number of private sector HD patients currently, CCCS assesses that there remains capacity for the existing nephrologists in the private sector to provide services to ESRD patients seeking HD treatment from private providers in Singapore.

58. In relation to availability of trained dialysis nurses, although several third parties noted that shortage of nurses, generally as well as specific to trained dialysis nurses, is an issue, CCCS assesses that any hurdle in hiring trained dialysis nurses is not considered a significant barrier to entry and expansion, as there remains competition for nurses amongst the private sector providers, and training for a registered nurse or enrolled nurse to become a trained dialysis nurse can be conducted in-house and be completed in a period of [✂] months.

59. CCCS next considered that the barriers for new entrants or existing providers to set up new dialysis centres, in terms of capital expenditure and time needed to set up a new dialysis centre, are not high. A third party observed that whilst capital expenditure is required upfront to set up a dialysis centre, it is not considered too difficult to open 1 dialysis centre with about 10 treatment beds. CCCS finds that the entry of TAL Dialysis in 2017 and DaVita in 2019, and expansion by the ARCA Group in 2015 and 2016 (5 new dialysis centres), the Aegis Group in 2015 (1 new dialysis centre) and KidneyCare in 2016 (1 new dialysis centre), supports its assessment that barriers to entry and expansion in this market are not high.

[60] Paragraphs 2.1.4, 2.2.1 and 2.2.2 of the Ministry of Health ("**MOH**")'s Guidelines for Private Healthcare Institutions providing Renal Dialysis – Regulation 4 of the Private Hospitals and Medical Clinics Regulations [Cap 248, Rg 1] dated 1 June 2001.
[61] Table 3 of Singapore Medical Council Annual Report 2018.

60. CCCS also considered that barriers against private sector providers to expand capacity of their existing dialysis centres are not high. Although FMC SG submitted that existing dialysis service providers may easily expand the capacity of existing dialysis centres by adding new beds or chairs,[62] CCCS notes that several third parties observed that expansion by way of increasing treatment beds is not likely in practice, as a private sector provider would likely have already planned for the maximum number of treatment beds when it renovated the premise to open the centre. Any addition of treatment beds to an existing dialysis centre would also involve the stopping of business operations in order to carry out renovation work. However, third parties confirmed that it may be possible to expand capacity by way of increasing the number of treatment shifts (typically up to a maximum of 3 treatment shifts a day), where a dialysis centre is currently operating fewer shifts, and should demand increase.

61. CCCS further considered if economies of scale form a barrier to entry and expansion in this market. After considering third parties' feedback, CCCS assesses that this does not constitute a significant barrier in this market. Several third parties stated that economies of scale would enable the private sector provider to negotiate for better deals vis-à-vis HD products and consumables from upstream suppliers, as well as enable better mobilisation of manpower across dialysis centres. However, CCCS notes that such form of economies of scale are unlikely to in itself constitute a significant barrier to entry and expansion in this market. In addition, CCCS also notes that [✂].[63]

62. In light of the above, CCCS is of the view that the barriers to entry and expansion for private sector operators in the market for the provision of HD services to ESRD patients are likely to be not high.

(ii) Provision of outsourced HD services to Outsourced Clinics

63. CCCS notes that the services provided by providers of outsourced HD services are limited to administering of HD and ancillary medical treatments, provision of nursing staff for the administering of HD treatments, and the provision of HD equipment and consumables, based on the specifications as decided by the owner and operator of the Outsourced Clinics.[64] This is supported by third party feedback. CCCS assesses that similar to the market for provision of outpatient HD services to ESRD patients, the key barrier to entry and expansion in this

[62] Paragraph 24.23 of Form M1.
[63] [✂].
[64] Paragraph 1.3 of FMC SG's response dated 7 April 2020 to CCCS's RFI dated 3 April 2020.

market would be the hiring of nursing staff in order to provide such staff to Outsourced Clinics according to their specifications.

64. Thus, following its assessment in the market for the provision of outpatient HD services to ESRD patients, CCCS assesses that any hurdle in hiring trained nursing staff is not considered a significant barrier to entry and expansion, for the reasons stated above. Further, CCCS also assesses that the size of the provider of outsourced HD services (e.g. in terms of number of dialysis centres it operates or the number of trained medical personnel it hires) is not a significant barrier to entry or expansion. A smaller sized provider would be able to procure additional resources, whether manpower or equipment, as needed to meet the specifications of the Outsourced Clinic. This is similar to if a provider wants to set up a new dialysis centre.

65. Although FMC SG and RT are [✂] currently providing outsourced HD services, CCCS notes that this is likely because providers for outsourced HD services are sourced via tender process. In this regard, FMC SG submitted that it had seen potential providers which attended tender briefings for past open tenders, including [✂].[65] This is supported by the responses from third parties, with indications that there would be sufficient choice of alternative providers for outsourced HD services post-Proposed Transaction.

66. In light of the above, CCCS is of the view that the barriers to entry and expansion for private sector operators in the market for the provision of outsourced HD services to Outsourced Clinics are unlikely to be high.

**(c) Countervailing Buyer Power**

(i) Provision of outpatient HD services to ESRD patients

67. CCCS notes that in the market for the provision of outpatient HD services to ESRD patients, the customers of the merging parties are individual patients seeking HD treatment. Considering that each individual customer tends to account for a small proportion of FMC SG's sales, and the absence of third party feedback suggesting any significant bargaining power by the patients, regardless of whether such patients are able to switch providers easily, CCCS is of the view that ESRD patients are unlikely to possess countervailing buyer power in the market for the provision of outpatient HD services to ESRD patients. Patients'

[65] Paragraph 13.5.3 of FMC SG's response dated 23 April 2020 to CCCS's RFI dated 16 April 2020.

ability to switch providers is instead assessed under the competitive assessment on non-coordinated effects below.

(ii) Provision of outsourced HD services to Outsourced Clinics

68. CCCS notes that in the market for the provision of outsourced HD services to Outsourced Clinics, the customers of the merging parties are body corporates who offer such HD services onwards to ESRD patients.

69. Third party feedback received by CCCS supports FMC SG's submission that Outsourced Clinics are generally able to exert influence over prices charged by the outsourced HD services provider to the Outsourced Clinic, and the quality of care supplied by the provider of outsourced HD services to itself and to ESRD patients. During the tender process, through their requirement specifications, the Outsourced Clinics are able to stipulate the price to be charged to the Outsourced Clinic and to patients for HD treatment sessions as being a key consideration in the award of the tender, and the quality of care (including equipment service level and reports to management), which the tenderers are expected to satisfy if they wish to be awarded the tender. In this regard, CCCS notes FMC SG's submissions on past experience where Outsourced Clinics had exercised its buyer power to negotiate [✂] from FMC SG and/or RT.[66]

70. In addition, third party feedback supports FMC SG's submissions that Outsourced Clinics may be willing and able to self-supply. CCCS also received feedback that it is relatively easy for an Outsourced Clinic to switch to self-supply, and it boils down to whether the Outsourced Clinic is willing to take up the challenges of operating its own dialysis centres.

71. Lastly, CCCS considers that where the ultimate objective of these Outsourced Clinics is to provide dialysis services at the most affordable prices, the merged entity will be restrained in its ability to raise prices or reduce quality or output, as these Outsourced Clinics may choose to run the dialysis centres themselves instead of passing any higher dialysis service costs to the patients. In this regard, CCCS notes that the merging parties currently collectively provide outsourced HD services to [✂], [✂], and [✂], which are likely to be concerned with providing dialysis services at affordable prices to its patients.

72. In view of the above, CCCS considers Outsourced Clinics to have some degree of countervailing buyer power vis-à-vis providers of outsourced HD services.

[66] Paragraphs 5.2 and 5.3 of FMC SG's response dated 2 April 2020 to CCCS's RFI dated 25 March 2020.

## VIII. COMPETITION ASSESSMENT

### (a) Non-Coordinated Effects

(i) Provision of outpatient HD services to ESRD patients

73. ***Market shares and significant combined size of the Parties.*** The Proposed Transaction involves the merger of the largest and third-largest competitors on a Singapore-wide basis, in the relevant market for the provision of outpatient HD services to ESRD patients. On a Singapore-wide basis, the Parties have a combined market share of [50 - 60]% in 2018, with the next largest competitors being significantly smaller in size: ARCA ([10 - 20]%), Aegis group ([0 - 10]%), and AKD (II) ([0 - 10]%), with the remaining competitors having market shares of less than [0 - 10]%.

74. CCCS notes that the third parties who expressed competition concerns about the Proposed Transaction in respect of this market had identified the significant combined size of the merged entity post-Proposed Transaction, as giving rise to their concerns that the merged entity may be able to:

(a) On the one hand, reduce their prices of HD services in the market (owing to their increased size and potential economies of scale, such as the ability to negotiate for better pricing from upstream suppliers, and/or because they are vertically integrated upstream), such that smaller-scale and/or non-integrated competitors may not be able to sustain their businesses in the market; and/or

(b) On the other hand, raise prices due to their increased size and market power (this concern also being raised as a potential consequence of the former, if smaller-sized competitors are driven out of the market).

75. On the issue of whether economies of scale may confer a significant competitive advantage to the merged entity over the remaining competitors in the market, CCCS notes the example of [✂].[67] Given this, CCCS notes that the comparative sizes of competing service providers (and any economies of scale this may entail) do not necessarily affect their ability to pose a competitive constraint against larger players. In light of this, CCCS is of the view that smaller HD service

[67] [✂].

providers do not appear likely to be impeded in their ability to pose a competitive constraint against the merged entity.

76. ***Closeness of competition in HD services.*** CCCS notes, from the market shares on a Singapore-wide basis in this relevant market, that FMC SG and RT do not appear to be the closest competitors to each other. This is given that, where FMC SG's market shares has decreased by around [0 - 10]% from 2016 to 2018, such market share appears to have been largely lost to ARCA, the second-largest competitor, which gained market shares of around [0 - 10]% over the same period. On the other hand, RT's market shares increased slightly by around [0 - 10]% only over the same period. Further, third parties generally did not identify FMC SG and RT to be particularly close competitors to each other.

77. ***Patients' factors in choosing a dialysis centre for HD services.*** Based on third party feedback, CCCS understands that patients requiring HD services, who do not qualify for dialysis at a VWO, would generally take into consideration the price of HD treatments and the location of the dialysis centre, subject also to whether a suitable treatment slot is available, as the main factors in deciding which dialysis centre to use.

78. Other factors that some patients may also take into consideration (typically ranking below location and price) include service quality, and the staff and environment of the dialysis centre. CCCS also notes that not all patients would take these other factors into consideration. FMC SG's submissions and third party feedback support that patients do not typically consider the brand of the private dialysis centre when choosing which dialysis centres to seek treatment from. In this regard, CCCS notes that, from the patient's perspective, the HD services offerings of different service providers is likely to be regarded as relatively homogenous.

79. ***Availability of competing HD service providers as alternatives to the Parties.*** CCCS notes that, post-Proposed Transaction, there will still remain around 12 competing private sector or restructured hospital (including JVs between restructured hospitals and private service operators) HD service providers in the relevant market, accounting for a total of around 43 dialysis centres in Singapore.[68]

[68] Based on paragraph 34.5 of Form M1, and Annex 3 to FMC SG's response dated 2 April 2020 to CCCS's RFI dated 25 March 2020; as adjusted by CCCS, and excluding private nephrology clinics with nil or zero HD patient numbers from 2016 to 2018.

80. Within each of the 7 catchment areas identified by CCCS, as noted in paragraph 54 above, there are 2 to 12 competing dialysis centres per catchment area, with the Parties' centres accounting for no more than [50 - 60]% of dialysis centres in these catchment areas.

81. CCCS also further considered the estimated spare capacity (as submitted by FMC SG[69]; and supplemented by third party information where available to CCCS) of each of the competing dialysis centres in each catchment area, and notes that in each of these catchment areas, there remains competing dialysis centres which have significant spare capacity (including competing centres that are located nearer to the FMC SG and RT centres at the centre of these catchment areas).

82. These competing centres with spare capacity accordingly appear able to absorb demand from any patients that may seek to switch away from the Parties' dialysis centres post-Proposed Transaction, and thus exert competitive constraint on the merged entity.

83. ***Ease of switching by patients generally.*** In this regard, CCCS notes that, whilst there may be some potential limitations to the patient's ease of switching to another service provider (e.g. where there is no spare capacity in other private sector providers), third party responses support FMC SG's submissions that they generally consider it easy for patients to switch between private sector providers. Given the likely existence of spare capacity amongst competing HD service providers in the market (as assessed above), and that patients likely regard the HD services offerings of different service providers as relatively homogenous (with the key factors for choosing a provider being location and price), patients are likely to be able to switch to other nearby dialysis centres that have spare capacity in the event of a price increase or decrease in quality of services by the merged entity.

84. ***Barriers to entry and expansion are likely to be not high.*** As noted above, the barriers to entry and expansion in this market are likely to be not high. The ability of potential and existing HD service providers to set up new dialysis centres can accordingly act as a competitive constraint on the merged entity post-Proposed Transaction.

[69] Annex 4 of FMC SG's response dated 18 May 2020 to CCCS's RFI dated 22 April 2020.

85. CCCS further notes that, based on the Singapore Renal Registry Annual Report ("**SRR Report**") 2018,[70] the total number of ESRD patients undergoing HD treatment in Singapore has increased year-on-year, from 5,198 patients in 2014 to 6,387 patients in 2018, with the yearly increase ranging between around 250 to 350 patients. Whilst this data is not limited only to the non-subsidised ESRD patients who fall within this relevant market, CCCS notes that the increasing trend suggests that demand for outpatient HD services from non-subsidised ESRD patients may continue to grow, and incentives are likely to remain for existing and potential competitors in this relevant market to undertake new entry and further expansion. This may be illustrated by the recent examples of entry and expansion noted above.

86. Given the above considerations, CCCS is of the view that non-coordinated effects are unlikely to arise in the relevant market for the provision of outpatient HD services to ESRD patients.

(ii) Provision of outsourced HD services to Outsourced Clinics

87. Notwithstanding that the Parties are likely to be [✂] in Singapore currently, CCCS has further assessed whether potential entry, as well as countervailing buyer power, may be sufficient to competitively constrain the merged entity post-Proposed Transaction.

88. ***Barriers to entry and expansion unlikely to be high.*** As assessed above, CCCS is of the view that the barriers to entry and expansion for private sector operators in this market are unlikely to be high. Although FMC SG and RT are [✂] currently providing outsourced HD services, CCCS notes that this is likely because providers for outsourced HD services are sourced via tender process. Existing private sector providers of outpatient HD services to ESRD patients, including smaller sized providers, would likely be able to procure additional resources, whether manpower or equipment, as needed to meet the specifications of the Outsourced Clinic, given that such resources are similar to if the provider wants to set up a new dialysis centre. As noted above, third party responses support FMC SG's submissions that there have been potential participants for past open tenders, indicating also that there would be sufficient choice of alternative providers for outsourced HD services post-Proposed Transaction.

89. ***Customers have some degree of countervailing buyer power, in particular ability to self-supply.*** Where Outsourced Clinics are willing and able to self-

[70] Table 5.5.5 of SRR Report 2018.

supply, this willingness and ability to do so is likely to continue to exert competitive constraint on the merged entity post-Proposed Transaction. CCCS also received feedback that it is relatively easy for an Outsourced Clinic to switch to self-supply, if they are willing to do so.

90. CCCS further notes FMC SG's submissions that the tender-based procurement process of Outsourced Clinics would mean that new rounds and opportunities for competition can arise whenever tenders are called for the provision of outsourced HD services at the Outsourced Clinics.[71] CCCS notes that Outsourced Clinics may be able to exercise some countervailing buyer power through the design of their procurement process, e.g. conducting open tenders or inviting multiple potential suppliers to participate in closed tenders.

91. Given the above considerations, CCCS is of the view that non-coordinated effects are unlikely to arise in the relevant market for the provision of outsourced HD services to Outsourced Clinics.

**(b) Coordinated Effects**

92. In respect of the market for the provision of outpatient HD services to ERSD patients, CCCS notes that high market concentration, and the potential homogeneity of HD services (from the patient's perspective), may potentially give the ability for market players to align their behaviour. However, CCCS also notes that the potential for new entry can serve to destabilise any potential alignment of behaviour by the incumbent providers. In this regard, CCCS notes the possibility of continued growth in demand for outpatient HD services from non-subsidised ESRD patients given the increasing trend observed (see also paragraph 85 above). This is likely to therefore incentivise new entry, as well as further expansion by existing competitors, which may destabilise any potential coordinated behaviour.

93. In respect of the market for the provision of outsourced HD services to Outsourced Clinics, CCCS notes that, other than the potential for new entry, the countervailing buyer power that Outsourced Clinics possess (in particular where they are willing and able to self-supply) is likely to serve to destabilise any potential coordinated behaviour that may arise between the merged entity and future competitors in this market.

[71] Paragraph 13.5.4 of FMC SG's response dated 23 April 2020 to CCCS's RFI dated 16 April 2020; and Paragraph 37(c) of FMC SG's Supplemental Submissions dated 18 May 2020.

94. In view of the above, CCCS is of the view that the Proposed Transaction is unlikely to give rise to coordinated effects.

**(c) Vertical Effects**

95. ***Foreclosure effect on upstream competitors.*** Considering third party feedback, CCCS is of the view that FMC SG is unlikely to have either the ability or incentive to foreclose competing suppliers of HD products and consumables in Singapore post-Proposed Transaction, given that the amount of sales of HD products and consumables accounted for by RT in the market (i.e. from which other competing upstream suppliers would be potentially foreclosed) does not appear to be significant.

96. Even considering the proportion of the total demand for HD products and consumables in Singapore accounted for by RT and FMC SG dialysis centres (as estimated by a third party), CCCS notes that upstream suppliers are still able to compete for the remaining customers of HD products and consumables in Singapore, which accounts for a significant majority of the total demand in Singapore.

97. ***Foreclosure effect on downstream competitors.*** Third parties generally indicated that FMC SG is one of the largest upstream suppliers of HD products and consumables in Singapore. Based on FMC SG's internal market share estimates for specific HD products and HD consumables, CCCS notes that FMC SG has high market shares in the supply of HD products and HD consumables in Singapore, in particular the supply of HD machines and the supply of one of the consumables required for HD treatments, Part B dry concentrate.

98. However, CCCS considered that FMC SG is likely to have limited incentives or ability to cease its supply of HD products and/or consumables, or increase its prices or reduce the quality and quantity of HD products and/or consumables sold, to its downstream competitors (in particular, competing private sector providers) post Proposed-Transaction, as customers generally have no difficulties in switching suppliers for HD products and consumables, and have alternative choices of upstream suppliers in the market.

99. Further, third parties generally agree that most HD machines and HD consumables from different suppliers are generally compatible with each other, and accordingly, there are no technical difficulties for customers to switch their supplier of such consumables. This is with the exception of Part B dry

concentrate, i.e. Bi-bags from FMC, which third parties indicated must be used together with FMC SG's HD machines, and are not interchangeable with similar consumables of other brands. However, in respect of this consumable, CCCS notes that in the event that FMC SG seeks to increase its prices or reduce the quality or quantity of Part B dry concentrate sold to its downstream competitors, these customers may nonetheless retaliate by switching away from FMC SG in respect of any other HD consumables that they purchase from FMC SG, as well as from FMC SG's HD machines (e.g. at the end of the machine's life cycle), if they are not already multi-sourcing such products/consumables.

100. Based on the above, CCCS assessed that the Proposed Transaction is unlikely to raise any vertical concerns.

*CCCS's assessment and conclusion on the SLC test*

101. Considering CCCS's conclusions in relation to the lack of non-coordinated, coordinated and vertical effects arising from the Proposed Transaction, CCCS is of the view that the Proposed Transaction will not lead to an SLC in the relevant markets.

## IX. EFFICIENCIES

102. Given the above assessment that the Proposed Transaction is unlikely to lead to a substantial lessening of competition in the relevant markets, CCCS is of the view that it is not necessary to make an assessment on the claimed efficiencies by FMC SG in this case.

## X. ANCILLARY RESTRICTIONS

103. FMC SG submitted that clause 13.1 of the SPA contains Non-Compete Restrictions[72] and Non-Solicitation Restrictions,[73] and that these constitute ancillary restrictions to the Proposed Transaction. Following the execution of the Supplemental Agreement to the Share Purchase Agreement dated 9 March 2020 between RTH, FMC SG and Chan Wai Chuen ("**Supplemental Agreement**") dated 26 May 2020, FMC subsequently submitted that they have revised the wording of the Non-Compete Restrictions and Non-Solicitation Restrictions.[74]

[72] Referring to Clauses 13.1.1 to 13.1.3 of the SPA. Paragraph 43.4 of Form M1.
[73] Referring to Clauses 13.1.4 to 13.1.5 of the SPA. Paragraph 43.4 of Form M1.
[74] Email from Allen & Gledhill LLP to CCCS dated 26 May 2020.

*CCCS's assessment of the Non-Compete Restrictions*

104. CCCS is of the view that the Non-Compete Restrictions are directly related to the Proposed Transaction, and the duration of the Non-Compete Restrictions (i.e. [✂]) is of a reasonable period of time for FMC SG to protect the value of the assets to be acquired by FMC SG. CCCS is also of the view that the subject matter, geographical scope and the persons subject to the Non-Compete Restriction, which is limited to the current business activities of RT in Singapore, is directly related and necessary for the Proposed Transaction.

105. As such, CCCS's assessment is that the Non-Compete Restrictions (as amended by the Supplemental Agreement dated 26 May 2020) constitute an ancillary restriction and consequently fall within the exclusion under paragraph 10 of the Third Schedule to the Act.

*CCCS's assessment of the Non-Solicitation Restrictions*

106. CCCS is of the view that the Non-Solicitation Restrictions are directly related to the Proposed Transaction. The Non-Solicitation Restriction for Customers has a similar effect to the Non-Compete Restrictions, and it allows FMC SG to obtain the full value of the assets acquired pursuant to the Proposed Transaction. The Non-Solicitation Restriction for Employees serves to preserve and protect the value of the human resource assets acquired by FMC SG pursuant to the Proposed Transaction.

107. In respect of the Non-Solicitation Restriction for Customers, CCCS is of the view that the duration, geographical scope and the persons subject to the Non-Solicitation Restriction for Customers is directly related and necessary for the Proposed Transaction.

108. In respect of the Non-Solicitation Restriction for Employees, CCCS considers the duration, geographical scope and persons subject to the Non-Solicitation Restriction for Employees to be directly related and necessary for the Proposed Transaction. CCCS also agrees with FMC SG's submission that the Non-Solicitation Restriction for Employees being applicable to the identified employees hired post-closing of the Proposed Transaction is necessary in view that [✂].[75]

109. CCCS concluded that:

[75] Paragraph 2.4 of FMC SG's response dated 12 May 2020 to CCCS's RFI dated 8 May 2020.

(a) The Non-Solicitation Restriction for Customers (as amended by the Supplemental Agreement dated 26 May 2020) constitutes an ancillary restriction and consequently falls within the exclusion under paragraph 10 of the Third Schedule to the Act; and

(b) The Non-Solicitation Restriction for Employees (as amended by the Supplemental Agreement dated 26 May 2020) constitutes an ancillary restriction and consequently falls within the exclusion under paragraph 10 of the Third Schedule to the Act.

## XI. CONCLUSION

110. For the reasons above and based on the information available, CCCS has assessed that the Proposed Transaction, if carried out into effect, will not infringe section 54 of the Act. In accordance with section 57(7) of the Act, this decision shall be valid for a period of 1 year from the date of the decision.

Sia Aik Kor

Digitally signed by Sia Aik Kor
Date: 2020.06.10 19:02:26 +08'00'

Sia Aik Kor
Chief Executive
Competition and Consumer Commission of Singapore