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

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

**In relation to the notification for decision of the proposed acquisition by SembWaste Pte. Ltd. of 100% of the issued shares in Veolia ES Singapore Pte. Ltd. pursuant to Section 57 of the Competition Act (Cap. 50B)**

**Date: 19 February 2020**

**Case number: CCCS 400/140/2020/002**

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Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of this Decision is denoted by [⌘].

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## I. Introduction

### *The notification*

1. On 8 January 2020, SembWaste Pte. Ltd. (“**SembWaste**”) filed a notification pursuant to section 57 of the Competition Act (Cap. 50B) (“**Act**”) for a decision by the Competition and Consumer Commission of Singapore (“**CCCS**”) as to whether its acquisition of 100% of the issued shares in Veolia ES Singapore Pte. Ltd. (“**VESS**”) (“**Proposed Transaction**”), if carried into effect, will infringe section 54 of the Act (“**section 54 prohibition**”).
2. In reviewing the Proposed Transaction, CCCS contacted 32 competitors and 40 customers of waste management services.<sup>1</sup> In addition, CCCS contacted the National Environment Agency (“**NEA**”) as the regulator of waste collection services (competitors, customers and NEA collectively referred to as “**Third-Parties**”).
3. Of the Third-Parties contacted, 18 replied and amongst whom 10 provided substantive responses. Most Third-Parties were either neutral to the Proposed Transaction, or had no objection or concern. The concerns raised by a few Third-Parties relate to SembWaste and VESS (each referred to as a “**Party**” and collectively the “**Parties**”) being large players, and these are addressed by CCCS’s assessment.
4. At the end of the public consultation process and after evaluating all the available information, CCCS has concluded that the Proposed Transaction, if carried into effect, will not infringe the section 54 prohibition.

## II. The Parties

### *SembWaste*

5. SembWaste is a wholly-owned subsidiary of Sembcorp Environment Pte. Ltd., which in turn is a wholly-owned subsidiary of Sembcorp Industries Limited (“**SCI**”), a public company listed on the Singapore Exchange.<sup>2</sup>
6. SembWaste is an integrated solid waste management service provider in Singapore that offers a comprehensive suite of services to the municipal, industrial and commercial sectors. Its range of solid waste management services includes:<sup>3</sup>
  - i. Public waste collection (“**PWC**”);
  - ii. General waste collection (“**GWC**”); and
  - iii. Converting recycled wood into wood chips.

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<sup>1</sup> Waste management services includes the collection, recycling and sorting of waste.

<sup>2</sup> Paragraph 8.1 of Form M1.

<sup>3</sup> Paragraph 10.9 of Form M1.

7. SCI's global turnover was approximately S\$11.7 billion in the financial year ended 31 December 2018. SCI's turnover in Singapore over the same period was approximately S\$4.2 billion, of which Sembcorp Environment Pte. Ltd. made up approximately S\$[<].<sup>4</sup> SembWaste's turnover in Singapore over the same period was approximately S\$[<].<sup>5</sup>

#### VESS

8. VESS is a wholly-owned subsidiary of Veolia Environmental Services Asia Pte. Ltd. ("VESA"), which in turn is a wholly-owned subsidiary of Veolia Environnement S.A. ("Veolia"), a public company listed on the Euronext Paris Stock Exchange and the ultimate parent company of the Veolia Group.<sup>6</sup>
9. VESS provides PWC and GWC services in Singapore<sup>7</sup> only and does not have a presence overseas. Its Singapore turnover was approximately S\$[<] in the financial year ended 2018.<sup>8</sup>

### III. The Proposed Transaction

#### *Nature of the Proposed Transaction*

10. Based on the Sale and Purchase Agreement ("SPA") that was executed on 3 January 2020, the Proposed Transaction will involve SembWaste acquiring 100% of the issued shares in VESS from VESA for S\$[<]. Post-Transaction, SembWaste will hold and control 100% of the issued shares in VESS.<sup>9</sup> There are no pre-merger structural links between the Parties.<sup>10</sup>

#### *Merger under Section 54 of the Act*

11. CCCS has considered that the Proposed Transaction constitutes a merger pursuant to section 54(2)(b) of the Act as SembWaste is acquiring direct control of the whole total issued share capital of VESS pursuant to the SPA.

### IV. Competition Issues

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<sup>4</sup> Paragraph 13.1 of Form M1.

<sup>5</sup> Annex A6 of Form M1.

<sup>6</sup> Paragraph 7.3 of Form M1.

<sup>7</sup> Paragraph 10.11 of Form M1.

<sup>8</sup> Paragraphs 10.8, 13.2 and 13.4 of Form M1.

<sup>9</sup> Paragraphs 11.3 and 11.7 of Form M1.

<sup>10</sup> Paragraph 9.1 of Form M1.

12. SembWaste submitted that the Parties overlap in Singapore for the supply of:<sup>11</sup>
  - (a) PWC services;<sup>12</sup> and
  - (b) GWC services<sup>13</sup>(collectively, the “**Overlapping Products**”).
13. As such, CCCS focused its assessment on whether the Proposed Transaction will lead to non-coordinated, coordinated or vertical effects that would substantially lessen competition in relation to the supply of PWC and GWC services to customers in Singapore.

## V. Counterfactual

14. SembWaste submitted that, in the absence of the Proposed Transaction, SembWaste would continue to operate in the market, and VESS would likely not continue to supply the Overlapping Products [§<].<sup>14</sup>
15. In the absence of sufficient evidence to establish other alternative counterfactual scenarios, CCCS has determined that the appropriate counterfactual in applying the Substantial Lessening of Competition (“**SLC**”) test should be the prevailing conditions of competition prior to the Proposed Transaction. In other words, in the absence of the Proposed Transaction, CCCS has considered that SembWaste and VESS would continue to compete in the supply of PWC and GWC services.

## VI. Relevant Markets

16. Based on SembWaste’s submission and Third-Party feedback, CCCS has considered that the relevant markets for the competition assessment of the Proposed Transaction are:
  - (a) The market for PWC services in Singapore; and
  - (b) The market for GWC services in Singapore(the “**Relevant Markets**”).

## VII. CCCS’s Assessment

### (a) Market Shares and market concentration

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<sup>11</sup> Paragraph 19.1 of Form M1.

<sup>12</sup> Refers to the collection of domestic/municipal waste from Housing Development Board estates, landed properties, condominiums, government properties and small trade premises regulated under a Public Waste Collectors licence.

<sup>13</sup> Refers to the collection of commercial and industrial waste including but not limited to inorganic and organic waste regulated under a GWC suppliers licence

<sup>14</sup> Paragraph 23.1 of Form M1.

*PWC*

17. CCCS noted that in bidding markets such as that for PWC services, especially where contracts are large and long in duration, *ex post* market shares that the Parties have submitted may not provide a reliable indicator of market power. Therefore, CCCS has based its assessment instead on the bidding information from the last tender for each of the six (6) sectors for PWC, which were called by the NEA between 2013 and 2019.

*GWC*

18. In contrast to the market for PWC services, the market for GWC services is characterised by contracts that are relatively small, frequent and with shorter durations. Consequently, market shares are more likely to reflect the current state of competition in the market. In this regard, CCCS has obtained information from the NEA on the volume of general waste collected and fleet size of general waste collection trucks operated. The Parties' combined market share of [20-30]% does not cross the indicative thresholds set out in the CCCS Guidelines on the Substantive Assessment of Mergers 2016,<sup>15</sup> which suggests that the Proposed Transaction is unlikely to raise concern. The incremental market share arising from the Proposed Transaction is low at [0-10]%, which suggests that the Proposed Transaction is unlikely to significantly alter the market structure.

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

*PWC*

19. CCCS has assessed that the barriers to entry and expansion for the market for PWC services do not appear to be high. In particular, with regard to barriers to entry, CCCS noted that the requirements for suppliers to be pre-qualified, licensed, and to bid for the tenders do not appear to be significant such that it would prevent or deter local or overseas suppliers from participating and competing in tenders for the supply of PWC services in Singapore. CCCS observed that there is a significant and continuing presence by local and overseas suppliers in the list of suppliers which have been pre-qualified and have participated in the latest PWC tenders. In this regard, CCCS noted that the most recent winning of a PWC tender by an overseas supplier, the Alba Group, via a consortium with a local supplier, Wah & Hua Pte. Ltd., is clear evidence of successful entry by an overseas supplier and a local supplier into the PWC market. With regard to barriers to expansion, CCCS noted that tenderers are typically given several months to prepare for the contract, which would be sufficient for existing suppliers to purchase vehicles and hire manpower to provide the services for an additional PWC sector. Feedback from Third-Parties did not suggest any significant barriers to entry and expansion as well.

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<sup>15</sup> Paragraph 5.15 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

*GWC*

20. CCCS has assessed that the barriers to entry and expansion for the market for GWC services do not appear to be high. In particular, with regard to barriers to entry, it would not be difficult for overseas suppliers or new entrants to obtain the necessary licences insofar as they have the required manpower and vehicles. Further, CCCS noted that licences have been issued to new entrants recently, which suggests that new suppliers are entering the market. With regard to barriers to expansion, CCCS noted the fragmented nature of the market for GWC services, and the fact that contracts are smaller and shorter in duration suggests that it would be easier for GWC suppliers to acquire new customers and expand, as compared to the market for PWC services. Feedback from Third-Parties did not suggest any significant barriers to entry and expansion as well.

**(c) Countervailing Buyer Power**

*PWC*

21. CCCS noted that NEA is the sole customer in the market for PWC services, which suggests that it may possess some degree of countervailing buyer power to constrain any increase in market power by the merged entity.

*GWC*

22. CCCS noted that each individual customer tends to account for a small proportion of the Parties' sales, and hence customers are unlikely to possess significant countervailing buyer power in the market for GWC services.

**(d) Non-coordinated effects**

*PWC*

23. Based on the bidding information from NEA and Third-Party feedback, CCCS found that the weight of evidence is on the Parties not being each other's closest competitors, and that there are other credible competitors in the market for PWC services.
24. Specific to the market for PWC services in Singapore, CCCS found that:
  - (a) The NEA is the sole customer in this market, which suggests that it may possess some bargaining power to constrain any increase in market power by the merged entity;
  - (b) Given that barriers to entry and expansion are not high, there remains a number of credible competitors which are capable of expanding in this market to compete with the merged entity; and

- (c) The merged entity will continue to face competition from the potential entry of local and overseas suppliers.

#### *GWC*

- 25. CCCS noted based on market share analysis and Third-Party feedback that there remains a number of credible competitors to the Parties, and that customers do not face significant cost in switching suppliers for the procurement of GWC services.
- 26. Specific to the market for GWC services in Singapore, CCCS found that:
  - (a) The combined market share of the Parties is below CCCS's indicative threshold, which suggests that competition concerns are unlikely to arise from the Proposed Transaction;
  - (b) Customers are able to switch suppliers in this market as there is a large number of alternative suppliers for customers to choose from; and
  - (c) The merged entity will continue to face competition from existing as well as potential local and overseas suppliers.
- 27. Based on the above, CCCS has assessed that the merged entity would continue to face sufficient competition in the Relevant Markets from other suppliers in Singapore and overseas. Therefore, the Proposed Transaction is unlikely to give rise to non-coordinated effects on competition in the Relevant Markets.

#### **(e) Coordinated effects**

- 28. CCCS has assessed that the characteristics of the Relevant Markets are not conducive to facilitate coordination between suppliers. There remains a significant number of suppliers in each market, which would make it difficult for them to coordinate their commercial behaviour. There is also a low degree of price transparency which would make it difficult for suppliers to monitor one another. Further, specific to the market for PWC services, lumpy and infrequent contracts make it more difficult for suppliers to coordinate their bids. Therefore, the Proposed Transaction is unlikely to give rise to coordinated effects on competition in the Relevant Markets.

#### **(f) Vertical effects**

- 29. CCCS noted that access to certain facilities (e.g. materials recovery facilities (“**MRFs**”)) is required by PWC and GWC suppliers to process the waste collected. In this regard, Third-Party feedback does not suggest any concern with regard to access to such facilities that would arise from the Proposed Transaction, as there remains a number of suppliers for such facilities in the market. Further, Third-Party feedback suggests that there are many MRFs in the market which are not at full utilisation and are easily accessible. Therefore, the Proposed Transaction is unlikely to give rise to vertical concerns.



## VIII. Efficiencies

30. Given that the Proposed Transaction is unlikely to lead to an SLC, it is not necessary for CCCS to make an assessment on the claimed efficiencies by SembWaste.

## IX. Ancillary Restrictions

31. SembWaste has submitted non-compete and non-solicitation clauses under [X] of the SPA as ancillary restrictions to the Proposed Transaction. The duration of the PWC Non-Compete Obligation<sup>16</sup> and PWC Non-Solicitation of Business Obligation<sup>17</sup> are for [X] years, and the duration of the GWC Non-Compete Obligation,<sup>18</sup> Non-Solicitation of Business Obligation<sup>19</sup> and Non-Solicitation of Employees Obligation<sup>20</sup> are for [X] years.
32. With respect to the Non-Compete Clauses,<sup>21</sup> CCCS agrees that both PWC and GWC Non-Compete Obligations are directly related to the Proposed Transaction as [X]. CCCS also agrees with the Parties' submission that the geographical scope of the Non-Compete Clauses should be limited to [X]. On duration, CCCS has assessed that a reasonable period of the GWC Non-Compete Obligation is [X] years given that [X]. With respect to the PWC Non-Compete Obligation, notwithstanding the Parties' submissions on the necessity of [X] years, CCCS is not satisfied that such duration is reasonable and proportionate to the overall requirements of the Proposed Transaction. Based on the information that CCCS has been provided with, CCCS is satisfied that [X] years is a reasonable duration for the PWC Non-Compete Obligation.
33. In relation to the Non-Solicitation Clauses,<sup>22</sup> CCCS has likewise assessed that PWC and GWC Non-Solicitation of Business Obligation<sup>23</sup> and Non-Solicitation of Employees Obligation are directly related to the Proposed Transaction as [X] pursuant to the Proposed Transaction. CCCS has assessed that the scope of Non-Solicitation Clauses is not overly restrictive of competition. In particular, CCCS noted that the scope of the Non-Solicitation of Employees Obligations is limited only to the [X]. CCCS agrees with the Parties' submission that the duration of [X] years of the PWC and GWC Non-Solicitation of Business Obligation is required to protect the value of the assets acquired by SembWaste in view of the market structure and the nature of the market involved. CCCS also agrees that the geographical scope of the Non-Solicitation Clauses should be limited to [X]. In line with the assessment for Non-Compete Clauses above, and based

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<sup>16</sup> Clause [X] of the SPA.

<sup>17</sup> Clause [X] of the SPA.

<sup>18</sup> Clause [X] of the SPA.

<sup>19</sup> Clauses [X] of the SPA.

<sup>20</sup> Clause [X] of the SPA.

<sup>21</sup> Clauses [X] of the SPA.

<sup>22</sup> Clauses [X] of the SPA.

<sup>23</sup> Clauses [X] of the SPA.

on the information CCCS has been provided with at present, CCCS has assessed that [~~3~~] years is a reasonable duration for the Non-Solicitation Clauses.

34. CCCS concluded that for the duration of [~~3~~] years, the Non-Compete Clauses and Non-Solicitation Clauses constitute ancillary restrictions which benefit from the exclusion under paragraph 10 of the Third Schedule to the Act.

**X. Conclusion**

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



Sia Aik Kor  
Chief Executive  
Competition and Consumer Commission of Singapore