Anticipated acquisition by Wilhelmsen Maritime Services AS of Drew Marine's Technical Services, Fire, Safety and Rescue Businesses

Decision on relevant merger situation and substantial lessening of competition

ME/6698/17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 6 September 2017. Full text of the decision published on 28 September 2017.

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

Contents

Page

SUMMARY 2
- Horizontal unilateral effects 2
- Conclusion 3

ASSESSMENT 3
- Parties 3
- Transaction 4
- Jurisdiction 4
- Counterfactual 5
- Background 5
- Frame of reference 6
- Competitive assessment 13
- Third party views 31
- Conclusion on substantial lessening of competition 31
- Exceptions to the duty to refer 32
- Decision 35
- ANNEX I 37

SUMMARY

1. Wilhelmsen Maritime Services AS, a wholly owned subsidiary of the Wil. Wilhelmsen Holding ASA group of companies (collectively, **Wilhelmsen**), has agreed to acquire Drew Marine's technical services, fire, safety and rescue businesses (the **Drew Marine business**) (the **Merger**). Wilhelmsen and the Drew Marine business are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. The Parties are both global suppliers of marine chemicals, gases, equipment and technical services. The CMA considered the impact of the Merger using the following product frames of reference based on the Parties' overlapping activities: (a) marine water treatment chemicals; (b) marine cleaning chemicals; (c) marine fuel oil treatment chemicals; (d) marine welding gases; (e) marine refrigerant gases; and (f) marine welding equipment.

4. The CMA carried out its assessment using a UK-wide geographic frame of reference and also considered the effects of the Merger on a European Economic Area (**EEA**) wide basis.[1]

Horizontal unilateral effects

5. The CMA assessed whether the Merger will raise competition concerns as a result of unilateral horizontal effects in the supply of those products in which the Parties' activities overlap.

6. In relation to the supply of marine water treatment chemicals, marine cleaning chemicals and marine fuel oil treatment chemicals within the UK and the EEA, the CMA found that the Parties were close competitors, that as a result of the Merger the Parties will have a significant combined share of supply, in particular on an EEA-wide (if not global) basis, and that the competitive constraint from rivals remaining post-Merger may not be sufficient to constrain the Parties from implementing a price rise. On this basis, the CMA believes that the Merger will give rise to a realistic prospect of a substantial lessening

[1] The CMA received evidence that the geographic frame of reference may be global for some large customers but it was not necessary to consider the competitive effects of the Merger on a global basis in light of the CMA's decision to exercise its discretion to apply the *de minimis* exception.

of competition (**SLC**) as a result of horizontal unilateral effects in the supply of these products.

7. In relation to the supply of marine welding gases, marine refrigerant gases and marine welding equipment in the UK and the EEA, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects. The available evidence shows that sufficient competitive constraints will remain post-Merger in all of these frames of reference.

Conclusion

8. In light of the evidence of close competition between the Wilhelmsen and Drew Marine businesses pre-Merger, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of marine water treatment chemicals, marine cleaning chemicals and marine fuel oil treatment chemicals. The CMA also concluded that entry and expansion into these categories would not be timely, likely and sufficient to mitigate these potential anticompetitive effects of the Merger.

9. However, on the facts of this case, the CMA believes that it is appropriate to exercise the CMA's discretion to apply the *de minimis* exception to its duty to refer the Merger.[2] In reaching this conclusion, the CMA has considered carefully the size of the affected markets in the UK (approximately £[9-10] million), the fact that Wilhelmsen and the Drew Marine business were only competing for small volumes of marine chemicals within the UK prior to the Merger, the magnitude of the likely harm and replicability.

10. The Merger will therefore **not be referred** to a Phase 2 investigation under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

11. Wilhelmsen is a global maritime industry group headquartered in Norway, which focuses on the provision of ship management and technical services as well as providing a wide portfolio of maritime products and services to vessels

[2] '*De minimis*' is shorthand for the CMA's exception to refer on the basis of the market being of insufficient importance. Please see: Mergers: Exception to the duty to refer in markets of insufficient importance, (CMA64), 16 June 2017, paragraph 5.

globally. The turnover of Wilhelmsen Maritime Services AS in 2016 was £**[✂]** worldwide and approximately £**[✂]** in the UK.

12. The business of the Wilhelmsen group is operated via a number of entities, with the most relevant for current purposes being Wilhelmsen Ship Services AS (**WSS**). WSS is a global provider of standardised product brands and service solutions to the maritime industry, focusing on marine products, marine chemicals and gases, maritime logistics and ship agency services. WSS operates the world's largest maritime network and has supplied products to ships in 2,200 ports in 125 countries across the globe. The turnover of WSS in 2016 was £**[✂]** worldwide and approximately £**[✂]** in the UK.

13. The Drew Marine business supplies a range of chemicals (water treatment, fuel oil treatment and cleaning chemicals), gases (welding gases and refrigerants) and equipment to the maritime sector (ie welding gases and fire, safety and rescue equipment). The turnover of Drew Marine business in 2016 was £**[✂]** worldwide and approximately £**[✂]** in the UK.

Transaction

14. The Merger involves the acquisition by Wilhelmsen of sole control over the Drew Marine business, pursuant to a Share Purchase Agreement entered by the Parties on 27 April 2017.[3]

15. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in the USA and Singapore.

Jurisdiction

16. As a result of the Merger, the enterprises of Wilhelmsen and the Drew Marine business will cease to be distinct.

17. The Parties overlap in the supply of marine water treatment chemicals, marine cleaning chemicals and marine fuel oil treatment chemicals in the UK with a combined share of supply of [50-60]%, [50-60]% and [20-30]%, respectively (with increments of [10-20]%, [5-10]% and [5-10]%, respectively). The CMA therefore believes that the share of supply test in section 23 of the Act is met.

[3] Wilhelmsen also intends to acquire the fire, safety and rescue business of Drew Marine as part of the Merger. However, there is no overlap between Parties' activities in the supply of these goods and services, and so the CMA has not considered this further.

18. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 19 July 2017 and the statutory 40 working day deadline for a decision is therefore 13 September 2017.

Counterfactual

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.[4]

21. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

22. Both Wilhelmsen and Drew Marine business are large suppliers of marine chemicals, gases and equipment and technical services. The Parties both supply customers with these products in the UK, and also on a worldwide basis.

23. The Parties overlap in the provision of chemicals (ie, cleaning chemicals, water treatment chemicals and fuel oil treatment chemicals), gases (ie, welding gases and refrigerant gases) and other consumables (mainly welding equipment) that are used for vessel maintenance and operation in the marine sector. Both Parties also provide ancillary technical services, which are sold alongside the accompanying chemical, gas and equipment.

---

[4] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

24. Both Parties operate on a global basis, supplying a very large number of ports around the world. Wilhelmsen, and to a lesser extent Drew Marine, produces many of its products itself, although some chemicals and equipment are purchased from other manufacturers and sold on. Neither Party produces their own gases, but instead each acts as a distributor for these products.

25. The Parties, as well as other players present in these markets, supply these products in multiple ports across the globe via their own distribution network of owned and leased warehouses, as well as through the use of third party logistics providers.

26. The products supplied by the Parties are used in most ships around the world, and many customers purchase these products together. It is common for customers (and large customers in particular) to purchase many products from the same supplier through globally or regionally negotiated contracts and framework agreements. Although the products make up a small proportion of customers spend, most are essential for the operation of their ships.

27. The Parties submitted that the combination of the two businesses will allow the merged entity to offer customers wider services, product availability and access to a strong technical competence base.

Frame of reference

28. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[5]

29. The Parties overlap in the provision of chemicals (ie cleaning chemicals, water treatment chemicals and fuel oil treatment chemicals), gases (ie welding gases and refrigerant gases) and other consumables (ie welding equipment) that are used for vessel maintenance and operation in the maritime sector. Each of these products is addressed in turn below.

[5] *Merger Assessment Guidelines*, paragraph 5.2.2.

Product scope

30. The Parties submitted that the appropriate product frames of reference for the assessment of the Merger were as follows: (a) industrial and marine chemicals; (b) industrial and marine gases; and (c) other marine consumables and equipment. This was on the basis that if a firm already supplies one type of chemical, gas or equipment it is easy to supply another type of chemical, gas or piece of equipment, due to both the commodity nature of the products and the ability to use existing distribution networks for multiple types of products within chemicals, gases and equipment.

31. Without prejudice to their submissions on the appropriate product frames of reference, the Parties stated that the narrowest plausible candidate frames of reference in which the Parties' activities overlap are: (a) marine water treatment chemicals; (b) marine cleaning chemicals; (c) marine fuel oil treatment chemicals; (d) marine welding gases; (e) marine refrigerant gases; and (f) marine welding equipment.

32. As a starting point, the CMA took these candidate frames of reference and first considered whether these could be narrowed further by type of product and, if not, whether these could be widened as a result of demand and supply-side substitutability factors.[6] Finally, the CMA considered whether it was appropriate to segment the frame of reference by customer type.

Marine chemicals, marine gases and marine consumables and equipment

33. The CMA first considered whether the candidate frames of reference, as set out in paragraph 31, could be narrowed further by product type. That is, the CMA has assessed whether there is a product or group of products within these markets which could not be combined with others on the basis of demand or supply-side substitution for the purposes of market definition.

34. On demand-side substitution, third parties indicated that products were not substitutable from their perspective across applications: for example, anti-scalants could not be used in place of corrosion inhibitors. The CMA therefore considered factors relating to supply-side substitution. A small number of third parties told the CMA that there were some differences in competitive conditions across products. Set against this, third parties told the CMA that third party toll arrangements could often permit firms to supply the broad range of products even if not all could be produced "in-house", and the CMA found that such third party production is a common and accepted feature of

[6] *Merger Assessment Guidelines*, paragraph 5.2.17.

this sector. In addition, the CMA found that, in general, the same firms compete to supply the different products within each category.[7]

35. The CMA therefore considered that the evidence broadly supported the Parties' submission that the candidate product categories set out in paragraph 31 are the narrowest plausible product frames of reference. However, to the extent relevant, the CMA has considered product differentiation in its competitive assessment.

36. The CMA next considered whether the product frames of reference could be broader than those set out in paragraph 31 and whether these should be widened to each of marine chemicals, marine gases and marine consumables and equipment, respectively.

Parties' views

37. The Parties submitted that it was not appropriate to have separate frames of reference for each type of chemical, gas and equipment supplied by the Parties, as set out in paragraph 31. They stated that customers typically enter into framework agreements covering multiple product types within each of the chemicals, gas and equipment product categories. They submitted that on the production side, the ability to supply one type of marine chemical, gas or equipment implies the ability to supply another and that the distribution network used by suppliers was the same regardless of product type.

38. The Parties also considered that most suppliers typically offer a complete product range and that the conditions of competition are similar for all products within each of the chemical, gas and equipment categories.

CMA's assessment

39. The CMA first considered whether there was demand-side substitutability between each type of marine chemical, each type of marine gas and between marine welding equipment with other types of marine equipment. The evidence gathered by the CMA indicated that customers do not regard marine cleaning chemicals, marine water treatment chemicals and marine fuel oil chemicals as demand side substitutes since each product has a different application. The same was true for each of marine refrigerant gases and marine welding gases, and for marine welding equipment as compared with other types of marine equipment. On the basis of the available evidence, the

[7] *Merger Assessment Guidelines*, paragraph 5.2.17.

CMA did not consider it was appropriate to widen the product frames of reference on the basis of demand-side substitutability.

40. While the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone, the CMA may widen the scope of the market beyond the narrowest plausible frame of reference where there is evidence of supply-side substitution.[8]

41. Some competitors stated that the production methods for each of the marine chemicals and each of the marine gas product types, listed in paragraph 31, were very similar, thereby meaning that a supplier of one type of these products could easily start supplying any of the other products.

42. However, in response to the CMA's market test, both competitors and customers commonly indicated that competitive conditions (such as the specific firms supplying these products) varied between different types of marine chemicals, marine gases and equipment. The CMA also found that there was differentiation between the respective offerings of the Parties' rivals across these categories and that the Parties' rivals competed to different extents (if at all) within each category. This was particularly the case for marine chemical products but the CMA also found that transportation of gas products was more highly regulated, and, according to the available evidence, the CMA could not exclude that regulations or supply agreements might inhibit firms supplying one gas product category moving into the supply of another. The CMA had less evidence with respect to marine equipment, but noted that some types of equipment (such as ropes) are produced in their own factories, therefore suggesting that supply side substitution is not possible across the broad range of marine equipment. Most competitors who are currently supplying products in one or more of the product categories identified in paragraph 31 said that they had not and would not consider beginning to supply products in those categories in which they did not currently have activity.

43. The evidence received by the CMA regarding supply-side substitution between each type of marine chemicals, marine gases and marine equipment was somewhat mixed. However, the evidence available indicated that the conditions of competition vary between each of the candidate frames of reference, as set out in paragraph 31.

44. In light of the evidence available to it, the CMA decided on a cautious basis that the product frame of reference should not be widened to each of marine

[8] Merger Assessment Guidelines, paragraph 5.2.17.

chemicals, marine gases and marine consumables and equipment for the purpose of assessing the Merger.

Industrial vs. marine products

45. The CMA also considered whether the product frame of reference should be widened to include industrial chemicals and gases.

Parties' views

46. The Parties submitted that it is not appropriate to draw a distinction between products supplied to marine customers and those supplied to industrial customers. They submitted that industrial players should be included in the product frame of reference on the basis of supply-side substitution because the almost identical nature of the underlying products of any given type, whether used for industrial or marine applications, means that it would be quick and easy for an industrial player to begin supplying marine customers. They also stated that some suppliers currently supply chemicals and gases to both marine and industrial customers.

47. The Parties acknowledged that an ability to supply marine customers at port is required to compete with them. However, they claimed that suppliers may use an agent, distributor or ship chandler.

CMA's assessment

48. The CMA considered whether products distributed by suppliers focussed on industrial applications are demand-side substitutes for products distributed by suppliers focussed on marine applications. The available evidence indicated that in many cases the underlying products may be similar, particularly as regards refrigerant and welding gases.

49. However, from a supply-side perspective, most third parties did not identify any industrial suppliers when considering significant players in each product category. In responses where customers did think that industrial suppliers were significant, they generally mentioned them in relation to specific applications (eg gases for the North Sea shelf). Third parties also indicated that most industrial suppliers do not have technical services which are focussed on marine customers, and as a result of not providing these technical services their products were not demand-side substitutes.

50. The CMA also found that substitution between marine and industrial products from a supplier perspective is limited. Consistent with this, **[✂]**, and third party evidence did not suggest that these companies exert a strong constraint

on the Parties. Moreover, there appear to be substantial barriers for marine customers to purchase their requirements from industrial suppliers; in particular, as acknowledged by the Parties, many industrial suppliers do not currently have distribution arrangements to supply to ports.

51. On the basis of the above evidence, the CMA decided not to widen the candidate product frames of reference to include industrial chemicals and gases. However, the CMA has considered the constraint posed by industrial suppliers where relevant in its assessment of the competitive effects of the Merger.

Customer segmentation

52. The CMA considered whether it was appropriate to segment the market by type of customers, in particular, for large customers who require a wide distribution network to supply their requirements at major ports across the EEA or on a global basis.

Parties' views

53. The Parties submitted that it would not be appropriate to delineate the frame of reference by type of customer because there are no significant differences between the products supplied to different vessel types and sizes, and suppliers typically sell their products to a vast array of vessel types and sizes using the same infrastructure. The Parties also submitted that whilst a broad or global distribution network is important for some customers, smaller companies can still compete if they supply a sufficient number of the key ports, and customers can make use of local suppliers where their contracted supplier cannot distribute products to a required location.

CMA's assessment

54. Third parties generally stated that the competitive conditions vary across customer groups. In particular, many customers and competitors indicated that the Parties are particularly capable of supplying large, global customers who require significant distribution networks and often contract on a pan-European or global basis under a framework agreement, whereas this is not always true for their competitors.

55. The CMA recognises that the conditions of competition may vary by customer size and/or type. However, it has not received sufficient evidence to clearly establish that it should make a distinction between small and large customers. As such, to the extent that competitive conditions do differ for different types

of customers, the CMA has considered this in its assessment of the competitive effects of the Merger.

Conclusion on product scope

56. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:

- marine water treatment chemicals;
- marine cleaning chemicals;
- marine fuel oil additive chemicals;
- marine welding gases;
- marine refrigerant gases; and
- marine welding equipment.

Geographic scope

57. The Parties submitted that the relevant geographic frame of reference is at least UK-wide in scope. This was on the basis of customer choice which is affected by the route of the vessels and the possibility of picking up supplies at the port where the vessel calls. As a result, some customers will only be locally active in the UK (ie fishing vessels and vessels that solely go between Aberdeen and the off-shore oil-fields in the UK North Sea) for whom a single port of supply in the UK would be sufficient. However, the Parties also submitted that over **[✂]** of Wilhelmsen's UK revenue comes from customers trading on a broader than regional or local basis.

58. Similarly, third parties told the CMA that a customer's choice between suppliers is affected by the route of the vessel and the possibilities of sourcing supplies along that route. If a vessel serves only a few home ports, then the decision is focussed on the servicing possibilities at these home ports. The CMA received data indicating that only a small core of local UK customers (6%) source most of their requirements (over 80%) in UK ports only. More broadly, the evidence indicated that most customers (over 90%) with UK activity also collect their requirements from ports elsewhere in the EEA and even on a global basis.

59. Both the Parties and many third parties said that customers delay or bring forward restocking decisions to purchase in ports with better terms of supply, although they cannot do this indefinitely. The data indicates that 67% of

vessel visits to UK ports are followed by a visit to a non-UK port within 30 days.[9] This figure implies that supply outside the UK is likely to be a demand-side substitute for a majority of purchases. Since only 12% of vessel visits in the UK were followed by a visit to a non-EEA port within 30 days, this suggests that supply in EEA ports is an alternative for many customers, but supply in global ports is less likely to be an alternative. On the basis of the above evidence, and on a cautious basis, the CMA has considered the impact of the Merger on both a UK and a wider EEA basis.

Conclusion on frame of reference

60. For the reasons set out above, the CMA has considered the impact of the Merger in the UK and EEA in the supply of:

- marine water treatment chemicals;
- marine cleaning chemicals;
- marine fuel oil additives;
- marine refrigerant gases;
- marine welding gases; and
- marine welding equipment.

Competitive assessment

Horizontal unilateral effects

61. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.[10] Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in each of the frames of reference set out in paragraph 60 above.

---

[9] CMA's estimates based on data provided by Wilhelmsen.
[10] *Merger Assessment Guidelines*, from paragraph 5.4.1.

62. The CMA has assessed the competitive effects of the Merger based on the shares of supply of the Parties, the closeness of competition between the Parties, and the extent of other competitive constraints.

The supply of marine water treatment chemicals

Shares of supply[11]

63. The Parties' turnover in the supply of marine water treatment chemicals in the UK and the EEA are set out in the table below.

	UK Turnover (£m)	EEA Turnover (£m)[12]
Wilhelmsen	**[✂]**	**[✂]**
Drew Marine	**[✂]**	**[✂]**
Combined	**[✂]**	**[✂]**

Source: Parties' calculations.

64. The Parties submitted share of supply data which was based upon a large number of assumptions which appeared to be inconsistent with the methodology used in Wilhelmsen's own internal documents. The CMA made a number of adjustments to these assumptions but nevertheless considers that the share of supply data used for each frame of reference needs to be treated with caution and should be viewed in conjunction with other available evidence.

65. The Parties share of supply in both the UK and the EEA are set out in the table below.

	UK	EEA
Wilhelmsen	[30-40]%	[30-40]%
Drew Marine business	[10-20]%	[20-30]%
Combined	[50-60]%	[50-60]%

Source: CMA estimates, based on Parties' information

66. The combined share of supply of the Parties in this category is higher than [50-60]% in both the UK and the EEA, with a significant increment.

Parties' submissions

67. The Parties submitted that their combined share of supply for marine water treatment chemicals in the UK and the increment resulting from the Merger

[11] **ANNEX I** contains a full explanation of the shares of supply calculations.
[12] Wilhelmsen's EEA turnover does not contain sales for non-vessels (eg ship chandlers), small vessels (below 1000gt) military vessels and new build vessels.

were moderate. Based on the figures they submitted to the CMA, the Parties' combined shares of supply were [30-40]% in the UK and [30-40]% in the EEA.

68. The Parties submitted that they face a substantial degree of competition from a large number of competitors in this segment. They submitted that Eazychem, Marichem and Marine Care (and to a lesser extent Vecom) compete particularly aggressively in the UK, with Marichem typically perceived to be the pricing maverick.

69. The Parties also claimed that, after the Merger, they will continue to face competitive constraints from alternative technologies that obviate (to a certain extent) the need for water treatment chemicals, such as demineralization technologies or anodes, oxidizers and UV technologies.

Third party submissions

70. Most third parties that responded to the CMA's market testing stated that both Wilhelmsen and Drew Marine were significant players in the supply of marine water treatment chemicals. Most customers indicated that the Parties offered similar products and only some of them indicated that other players in the market also offered equivalent products to those of the Parties.

71. A majority of customers expressed concerns about the Merger, although often these responses took into account the effect of the Merger across a number of product categories and not just water treatment chemicals. Where the respondent did single out water treatment chemicals, those customers were concerned.

72. Most customers' responses cited the importance of being able to contract with global suppliers. More specifically, a third party stated that there are no other marine chemical suppliers in the UK that can offer worldwide coverage. Another customer also expressed a particular concern that there were not alternative suppliers for marine water treatment chemicals.

73. When asked about a hypothetical price rise, many customers either said they would not switch away from their current supplier, or listed the other merging party as an alternative, with a clear majority of these answers being linked to water treatment chemicals (amongst others). Some third parties also indicated that it would be very difficult and expensive to switch supplier for boiler chemicals, a key aspect of marine water treatment chemicals.

CMA's assessment

74. The CMA considers that the combined share of supply of the Parties in the supply of marine water treatment chemicals is high and that the increment in this category is significant, both as regards the UK and EEA markets.

75. Although the increment is high in both the UK and the EEA, it is proportionately larger in the EEA, suggesting greater competitive concern for larger customers who purchase on this basis. This is consistent with customer responses to the CMA's market testing which indicated that the Parties have the broadest reach, and where supply across many ports is required, there is no clear best alternative to the Parties. Although, there are some smaller rivals which exert some constraint if customers are willing to multisource.

76. The Parties submitted that they face competition from a very large number of firms in this segment. A Wilhelmsen commercial report, dated March 2017, which was compiled for the purposes of evaluating the Merger listed five companies as being "strong" competitors. **[✂]**. The CMA was cautious in placing weight on this document given that it was prepared in contemplation of the Merger.

77. However, many of the key competitors identified have low revenues relative to the Parties; no competitor who responded submitted UK revenues which were higher than Wilhelmsen's or Drew Marines, and many submitted revenue estimates that were negligible.

78. A Drew Marine presentation which profiled competitors **[✂]**. It stated that Marichem's core customers were limited to the "Greek market", albeit with an expanding presence.

79. The CMA also considered internal win/loss data submitted by Wilhelmsen. Although caveats exist around the reliability of this data, it appeared to show that where Wilhelmsen lost business, it **[✂]** did so to Drew Marine. Specifically, **[✂]** sales opportunities lost by Wilhelmsen where a competitor was recorded, and where the opportunity was listed as being for water treatment chemicals, were matched to Drew Marine.[13] This implies that pre-Merger, Drew Marine exerted a significant competitive constraint on Wilhelmsen and that competitive constraints from rivals were limited.

[13] These figures were global, but the pattern on a smaller UK-customer (defined here only as any customer which purchased in the UK for any market) sample size were consistent. There were a number of caveats around this data which we have taken into account: these included that entries were not matched to a competitor, and that some sales opportunities may have been either misallocated to water or not allocated to water where they should have been.

80. When asked what they would do in response to a 5-10% hypothetical price increase, some customers highlighted the difficulty of switching suppliers, and most of them listed the other merging party as an alternative to which they would switch in their responses to the CMA's market testing.

81. The Parties also submitted data summarising the competition and conversions section of Drew Marine's weekly sales reports. Although it was not possible to break these data down in a consistent way by product category, for all chemicals at a global level, Wilhelmsen received around **[✂]**% of mentions, with each other rivals receiving less than **[✂]**% of mentions.

Conclusion

82. For the reasons set out above, the CMA considers that the evidence indicates that the Parties are close competitors in the supply of water treatment chemicals, and in particular for large customers with an EEA or global supply requirement, and that the constraint from rivals remaining post-Merger will be limited.

83. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of marine water treatment chemicals, both with respect to the UK and EEA markets.

The supply of marine cleaning chemicals

Share of supply

84. The Parties' turnover in the supply of marine cleaning chemicals in the UK and the EEA are set out in the table below.

	UK Turnover (£m)	EEA Turnover (£m)[14]
Wilhelmsen	**[✂]**	**[✂]**
Drew Marine	**[✂]**	**[✂]**
Combined	**[✂]**	**[✂]**

Source: Parties' calculations

[14] Wilhelmsen's EEA turnover does not contain sales for non-vessels (eg ship chandlers), small vessels (below 1000gt) military vessels and new build vessels.

85. The Parties' shares of supply are set out in the table below. As stated in paragraph 64 and ANNEX I, the CMA has considered these shares as approximate figures only.

	UK	EEA
Wilhelmsen	[40-50]%	[30-40]%
Drew Marine business	[5-10]%	[5-10]%
Combined	[50-60]%	[40-50]%

Source: CMA estimates, based on Parties' information [15]

86. The combined share of supply of the Parties in this category is higher than [40-50]% in the UK and the EEA, with a material increment.

Parties' submissions

87. The Parties submitted that their combined estimated share of supply in this segment is moderate (at [20-30]% using the figures they submitted to the CMA) and the increment resulting from the Merger is low in the UK and on an EEA-wide basis. The Parties also noted that there are various factors that mitigate the Parties' combined share of supply in the UK.

88. The Parties considered that marine cleaning chemicals are highly commoditised products, which allows customers in certain instances to effectively self-supply certain marine cleaning chemicals.

89. The Parties also submitted that they face a significant number of well-established global competitors with a similar marine cleaning chemical portfolio to the Parties, including Marichem, Marine Care, Vecom, UNIservice, Bluetec, Chemo Marine, Eazychem, Aquamarine Chemicals and Star Marine, as well as from a number of UK-based suppliers of marine cleaning chemicals that have traditionally had a more UK centric or regional focus, such as, Arrow Solutions, Hepburn Bio Care, Star International and Maritime Chemicals.

90. The Parties also claimed that barriers to customer switching were low because customers typically enter into framework agreements that do not contain a minimum volume or value commitment that ties the customer to a particular supplier.

Third party submissions

91. Most competitors and redistributors, and some customers that responded to the CMA's market testing highlighted a number of alternative suppliers who

[15] Figures do not sum due to rounding.

are active in the supply of marine cleaning chemicals. However, most customers cited the importance of being able to contract with global suppliers, since most suppliers in the UK are smaller firms who have a more limited global presence.

92. A majority of customers who responded expressed concerns about the Merger, although the responses took into account the effect on each product category. Where the respondent did single out cleaning chemicals, they were concerned for at least technical cleaning chemicals. When asked about a hypothetical price rise, many either said they would not switch or listed Drew Marine as an alternative, with a significant number of these answers being linked to marine cleaning treatment chemicals (amongst others).

93. Some customers considered that there exists differentiation within the marine cleaning chemicals market, in which some products are more "commodity" like, and others are more technical. Those customers stated that since they prefer to buy multiple products from the same supplier, because orders often come with a delivery charge, and because the Parties' technical support services (including in relation to technical cleaning chemicals) are regarded as strong, the Parties' ability to supply the full range of cleaning chemicals across a broad geography made them closer competitors than smaller or niche suppliers.

CMA's assessment

94. The CMA considers that the combined share of supply of the Parties in the supply of marine cleaning treatment chemicals is high and that the increment in this category is material. The increment to the Merger is proportionately larger in the EEA, suggesting greater competitive concern for customers who purchase on this basis. This is consistent with customer responses to the CMA's market testing which indicated that the Parties have the broadest reach, and where supply across many ports is required, although there are some smaller companies which exert some constraint, there is no clear best alternative to the Parties.

95. The Parties have submitted that they face competition from a number of global suppliers in this segment. A Wilhelmsen commercial report dated March 2017 which was compiled for the purposes of evaluating the merger listed six companies as being "strong" competitors. **[✂]**. As set out above, the CMA has placed limited weight on this evidence since it was compiled in contemplation of the Merger.

96. The CMA did not receive corroborating evidence to suggest each of the players listed by the Parties places a strong constraint on them. It received

estimates from two competitors which put their UK revenues as higher than Drew Marine's, although in both cases their revenues were substantially smaller than Wilhelmsen's. All other competitors who responded had low or negligible UK revenues.

97. The CMA considered win/loss data submitted by Wilhelmsen.[16] This matched Drew Marine to **[✂]** sales opportunities lost by Wilhelmsen where a competitor was named.

98. When asked what they would do in response to a 5-10% hypothetical price increase, some customers highlighted the difficulty of switching suppliers, and most of them listed the other merging party as an alternative to which they would switch in their responses to the CMA's market testing.

99. As set out above, the CMA also considered data summarising the competition and conversions section of Drew Marine's weekly sales reports, where a breakdown was possible for chemicals at a global level. Wilhelmsen received around **[✂]**% of mentions, with each other competitor receiving less than **[✂]**% of mentions.

Conclusion

100. For the reasons set out above, the CMA considers that the evidence indicates that the Parties are close competitors in the supply of marine cleaning chemicals, and in particular for large customers with an EEA or global supply requirement, and that the constraint from rivals remaining post-Merger will be limited.

101. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of marine cleaning chemicals, both with respect to the UK and EEA markets.

The supply of marine fuel oil treatment chemicals

Share of supply

102. The Parties' turnover in the supply of marine fuel oil treatment chemicals in the UK and the EEA by value are set out in the table below.

[16] As discussed above, there were several caveats around this data.

	UK Turnover (£m)	EEA Turnover (£m)[17]
Wilhelmsen	**[✂]**	**[✂]**
Drew Marine	**[✂]**	**[✂]**
Combined	**[✂]**	**[✂]**

Source: Parties' calculations

103. The Parties' share of supply are set out in the table below. As stated in paragraph 64 and ANNEX I, the CMA has considered these shares as approximate figures only.

	UK	EEA
Wilhelmsen	[20-30]%	[10-20]%
Drew Marine business	[5-10]%	[5-10]%
Combined	[20-30]%	[20-30]%

Source: CMA estimates, based on Parties' information.

104. The Parties' combined share of supply in this category is higher than [20-30]% in the UK and the EEA, but this is very likely to be an underestimate. This is because the methodology used to calculate the market size **[✂]**. As a result, the market size is very likely to be an overestimate, and therefore the share of supply an underestimate.

Parties' submissions

105. The Parties submitted that the Parties' combined share of supply in any geographical basis is small (based on their submitted figures of [10-20]% in the UK and EEA). Furthermore, the Parties claim that the Merger will not give raise to unilateral effects in this segment in light of a number of key factors.

106. The Parties submitted that Innospec is the leading marine supplier, and, in the Parties' view, this company currently dominates this segment both globally and in the UK, and post-Merger will continue to impose a significant competitive constraint on the merged entity. They also submitted that they will continue to face competition from a significant number of other suppliers of marine fuel oil treatment chemicals that are active in the UK.

107. In the Parties' view, ship chandlers also compete aggressively in the supply of marine fuel oil treatment chemicals. They claimed that customers can acquire fuel oil treatment chemicals from ship chandlers given the low levels of accompanying technical support services required. They considered that this is particularly so given the aggressive pricing adopted by ship chandlers.

[17] Wilhelmsen's EEA turnover does not contain sales for non-vessels (eg ship chandlers), small vessels (below 1000gt) military vessels and new build vessels.

108. As for other markets, the Parties also submitted that barriers to customer switching are low due to the fact that customer framework agreements do not contain minimum volume or value commitments that tie customers to a particular supplier.

Third party submissions

109. A majority of customers who responded expressed concerns about the Merger, although the responses took into account the effect on each product category. Likewise, when asked about a hypothetical price rise, many either said they would not switch or listed the other merging party as an alternative for their purchases

110. No significant competitor has been identified by third parties in this segment. Whilst a minority of customers said that they purchase some marine fuel oil treatment chemicals from industrial suppliers, the evidence gathered by the CMA did not indicate that this was a significant constraint. Further, although alternative suppliers do seem to exist in this market, they tend to be made up of a long tail of smaller firms who have a more limited global presence, a factor cited as being of importance in most customers' responses.

CMA's analysis

111. The estimates above suggest the Parties have only a [20-30]% combined share of supply in this product category. However, the CMA considers that this is likely to be significantly understated. The increment to the Merger is proportionately larger in the EEA, suggesting greater competitive concern for customers who purchase on this basis. This is consistent with customer responses to the CMA's market testing which indicated that the Parties have the broadest reach, and where supply across many ports is required, although there are some smaller companies which exert some constraint, there is no clear best alternative to the Parties.

112. The Parties have submitted that Innospec is the market leader in this segment. Innospec told us that **[✂]**. The CMA received limited evidence indicating that other rivals constrained the Parties' activities in the supply of marine fuel oils.

113. A Wilhelmsen commercial report dated March 2017, which was compiled for the purposes of evaluating the merger, lists **[✂]** as a "strong" competitor in this market and listed three other "strong" alternatives. In contrast to this, one listed competitor told the CMA that they do not generate any revenue in the UK and the Parties' customers did not identify any alternative suppliers of marine fuel oils to the Parties in the UK. **[✂]**. In light of this evidence, the

CMA was unable to verify the Parties' submission that they faced a number of other "strong" rivals in the supply of marine fuel oil.

114. The CMA considered win/loss data submitted by Wilhelmsen.[18] This matched Drew Marine to **[✂]** lost opportunities, whilst the remaining **[✂]** were shared between four other suppliers.

Conclusion

115. The CMA notes that its estimates of shares of supply in the supply of marine fuel oil treatment chemicals suggest that the Parties' share, after the Merger, would be only about [20-30]%. However, for the reason set out at paragraph 104 these figures may be an underestimate, and the CMA has been able to put very limited weight on this evidence. Also, the CMA considers that the evidence indicated that the Parties are close competitors, especially for customers that require supply in a global scope, and that there is limited constraint from other competitors. Furthermore, the evidence indicated that the rival which the Parties stated was the leading player in this sector was not active in the sale of marine fuel oils directly to customers in port.

116. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of fuel oil treatment chemicals, both with respect to the UK and EEA markets.

The supply of marine welding gases

Share of supply

117. The Parties' turnovers in the supply of marine welding gases in the UK and the EEA by value are set out in the table below.

	UK Turnover (£m)	EEA Turnover (£m)[19]
Wilhelmsen	**[✂]**	**[✂]**
Drew Marine	**[✂]**	**[✂]**
Combined	**[✂]**	**[✂]**

Source: Parties' calculations

118. The Parties' share of supply are set out in the table below. As stated in paragraph 64 and ANNEX I, the CMA has considered these shares as approximate figures only.

[18] As discussed above, there were several caveats around this data.
[19] Wilhelmsen's EEA turnover does not contain sales for non-vessels (eg ship chandlers), small vessels (below 1000gt) military vessels and new build vessels.

	UK	EEA
Wilhelmsen	[30-40]%	[20-30]%
Drew Marine business	[0-5]%	[0-5]%
Combined	[30-40]%	[30-40]%

Source: CMA estimates, based on Parties' information.

119. The combined share of supply of the Parties in this category is higher than [30-40]% in the UK and the EEA, but the increment as a result of the merger is small.[20]

Parties' submissions

120. The Parties submitted that their combined share in the supply of marine welding gases in the UK and the EEA is small and the increment resulting from the Merger is "*de minimis*".

121. The Parties submitted that there is significant competition from a number of competing global marine suppliers, including most notably Marichem Marigases, Vecom, Bluetec and UNIservice.

122. In the Parties' opinion, entry barriers into this segment are low given that welding gases are commodity products and readily available from industrial players. In the Parties' opinion, these low barriers to entry mean that marine suppliers of welding gases face significant competitive constraints from global industrial players, particularly because some of these competitors already supply welding gases to marine customers to varying extents.

123. The Parties also claim that due to the highly commoditised nature of marine welding gases, barriers to customer switching are low. They consider that switching is also facilitated by the prevalence of multi-sourcing amongst customers and the fact that customer contracts typically do not contain minimum volume or value commitments that tie customers to a particular supplier.

Third party submissions

124. Customers submitted that switching supplier from Wilhelmsen is difficult because the cylinders in which gases are supplied are their property. As a result, in order to switch, all of these must be returned. However, no customers expressed particular concerns in relation to welding gases.

[20] Even were the shares of supply much different from the above, the increment would still very likely be considered small due to the very low turnovers generated in the UK.

125. No gas suppliers who responded to the CMA’s market testing raised any competition concerns in respect of this Merger. However, one competitor said that Wilhelmsen has exclusivity agreements which prevent it from picking up UK business but the CMA notes that this is not a merger specific effect.

CMA’s analysis

126. The CMA considers that the combined shares of supply are moderate in both the UK and EEA, but the increment is low at only around [0-5]% and [0-5]% in the UK and EEA, respectively.

127. Although a low increment to the transaction commonly implies lower pricing pressure because less competition is being “lost” by the merger, all else being equal, competition concerns can still arise if the smaller player exerts a disproportionate degree of competitive constraint on the larger player.

128. In this case, there is some evidence to suggest that, pre-Merger, Drew Marine does place a significant competitive constraint on Wilhelmsen. In particular, many customers already have purchasing relationships with both companies (either for welding gases, or at least for other products) which reduces switching costs to Drew Marine (but not others, with whom dual supply relationships or global contracts are rarer).

129. However, taken together, customer responses suggested the following were alternative suppliers for gases (including welding gases): Marichem, Air Products, Mento, Worldclean International, Handsbuch, Chevron, and BOC. Further, Marichem submitted information that suggested its UK sales were of a comparable level to Drew Marine’s.

130. The CMA also considered the evidence received in relation to the difficulty of switching suppliers for customers, because the cylinders in which gases are supplied are Wilhelmsen’s property. The CMA considers that this may reduce the current level of competition between the Parties pre-Merger (as well as between Wilhelmsen and other suppliers).

131. The CMA has carefully considered the balance of evidence in relation to marine welding gases. The CMA notes that its estimates of shares of supply in the supply of marine welding gases suggest that the Parties’ share, after the Merger, would be higher than [30-40]%. However, for the reasons set out in Annex 1, the CMA has applied only limited weight to these this evidence, although, it had greater confidence in the shares of supply for marine welding gases than marine fuel oils.

132. The CMA has also considered that in this segment, there is a very small increment arising from the Merger and that there are third party alternatives

for customers. In light of these reasons, the CMA considers that the Merger will not lead to significant reduction of competition in the supply of marine welding gases in the UK, and more broadly in the EEA.

Conclusion

133. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of marine welding gases in the UK and on a EEA-wide basis.

The supply of marine refrigerants gases

Share of supply

134. The Parties' turnovers in the supply of marine refrigerant gases in the UK and the EEA by value are set out in the table below.

	UK Turnover (£m)	EEA Turnover (£m)[21]
Wilhelmsen	**[✂]**	**[✂]**
Drew Marine	**[✂]**	**[✂]**
Combined	**[✂]**	**[✂]**

Source: Parties' calculations

135. The Parties' share of supply are set out in the table below. As stated in paragraph 64 and ANNEX I, the CMA has considered these shares as approximate figures only.

	UK	EEA
Wilhelmsen	[20-30]%	[20-30]%
Drew Marine business	[0-5]%	[5-10]%
Combined	[20-30]%	[20-30]%

Source: CMA estimates, based on Parties' information.

136. The Parties' combined share of supply in this segment is higher than [20-30]% in the UK and the EEA, but the increment arising from the Merger is small.

Parties' submissions

137. The Parties submitted that their combined share in this segment is an insufficient basis on which to conclude that the Merger will give rise to an SLC, particularly when combined with the limited presence in the UK that

[21] Wilhelmsen's EEA turnover does not contain sales for non-vessels (eg ship chandlers), small vessels (below 1000gt) military vessels and new build vessels.

Drew Marine business has in this segment and the "*de minimis*" increment resulting from the Merger.

138. The Parties submitted that the merged entity will continue to face competition from the large global suppliers of marine gases (ie, Marichem/Marigases, Vecom, Bluetec and UNIservice), as well as from a number of additional suppliers that are also active, in the supply of refrigerants in the UK (albeit it to a more limited extent, for example, Mexichem, Chemour and Arkema).

139. The Parties also consider that the countervailing factors discussed above for the marine welding gases segment (low barriers to entry and low barriers to customer switching) apply equally to the marine refrigerants segment.

Third party submissions

140. No customers or competitors raised any specific competition concerns in respect of the supply of marine refrigerant gases.

CMA's analysis

141. Similar considerations apply in relation to this market as in that for marine welding gases. The key differences are that no competitors submitted that exclusive supply arrangements exist in this market, but the increment is slightly higher on an EEA basis. Measured by the size of the market (and caveating these figures), the increment would be [5-10]% in the EEA and [0-5]% in the UK.

142. The Parties have submitted that there are other suppliers present in this segment of the market. This has been confirmed by the evidence gathered by the CMA. Customers who responded to the CMA's market testing have also identified several alternative suppliers of marine refrigerant gases, usually stating that those who could supply marine welding gases could also supply marine refrigerant gases.

143. The evidence gathered by the CMA, indicated that the merged entity will remain sufficiently constrained in the supply of marine refrigerant gases by other suppliers offering the same services in the UK and on a EEA-wide basis.

Conclusion

144. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of marine refrigerant gases in the UK and on a EEA-wide basis.

The supply of marine welding equipment

Share of supply

145. The Parties' turnovers in the supply of marine welding equipment in the UK and the EEA by value are set out in the table below.

	UK Turnover (£m)	EEA Turnover (£m)
Wilhelmsen	[✂]	[✂]
Drew Marine	[✂]	[✂]
Combined	[✂]	[✂]

Source: Parties' calculations

146. The Parties' share of supply are set out in the table below. As stated in paragraph 64 and ANNEX I, the CMA has considered these shares as approximate figures only.

	UK	EEA
Wilhelmsen	[20-30]%	[20-30]%
Drew Marine business	[0-5]%	[0-5]%
Combined	[20-30]%	[20-30]%

Source: CMA estimates, based on Parties' information.

147. The Parties' combined share of supply of the Parties in this category is higher than [20-30]% in the UK and the EEA, but the increment resulting from the Merger is small.

Parties' submissions

148. The Parties submitted that whilst they overlap in this segment, the Parties' combined shares are at most moderate and Drew Marine's presence in this segment is minimal. They also claimed that the increment resulting from the Merger is negligible.

149. The Parties also submitted that after the Merger the merged entity will continue to face significant competition from large global providers of welding equipment (including Miller, Lincoln Welding, ESAB and WTL) and a number of smaller manufacturers (many of which sell through ship chandlers).

Third party submissions

150. Four of the Parties customers said they purchase from suppliers other than the Parties, and several competitors confirmed they supplied these products.

CMA's analysis

151. The Parties have submitted that they face competition from a number of global suppliers in this segment. According to the information available and the responses received from third parties in the CMA's market testing, there will be, at least three other players offering welding equipment in the UK and on an EEA wide basis. Some third parties also consider that the same suppliers of chemicals and gases could also supply welding equipment.

152. Moreover, on any geographical basis, the increment resulting from the Merger in this segment is very low: Drew Marine comprises a small portion of the merged entity's revenues, and using the estimates produced by the market share model, the increment to the share of supply is [0-5]% in the EEA and [0-5]% in the UK.

Conclusion

153. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of marine welding equipment in the UK and on a EEA-wide basis.

Conclusion on horizontal unilateral effects

154. In relation to the supply of marine water treatment chemicals, marine cleaning chemicals and marine fuel oil treatment chemicals within the UK and the EEA, the CMA found that the Merger does give rise to a realistic prospect of a SLC as a result of horizontal unilateral effects. The Merger has resulted in a reduction in the number of suppliers providing these services, in particular on an EEA-wide (and global) basis, and the evidence indicates that the competitive constraints remaining post-Merger may not be sufficient to constrain the Parties.

155. In relation to the supply of marine welding gases, marine refrigerant gases and marine welding equipment in the UK and the EEA, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.

Barriers to entry and expansion

156. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases, may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might

prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[22]

157. The Parties submitted that this is a market where potential entry constrains the Parties, and actual entry would occur post-Merger to offset any price rise. Their internal documents provide some evidence to support the idea that they do consider these issues in the ordinary course of their business.

158. However, as set out in paragraphs 73 and 124 the CMA received evidence from third parties that the switching costs are substantial in each of the product categories where the CMA has identified concerns. As stated in paragraph 73, some third parties said that it would be very difficult and expensive to switch supplier for boiler chemicals, a key aspect of marine water treatment chemicals.

159. Further, although alternative suppliers do seem to exist in all product categories, they tend to be made up of a long tail of smaller firms who have a more limited global presence, a factor cited as being of importance in most customers' responses.

160. In addition, very few of the firms who responded to the CMA's market testing would consider entering product categories in which they did not already supply products. In relation to this, many competitors cited concerns around technical expertise and the challenges of building up supplier and distributor arrangements. As such, the CMA did not receive any evidence indicating that entry and/or expansion was going to occur on a timely, likely or sufficient basis to mitigate the anticompetitive effects of the Merger.

161. Considering all these factors, the CMA considers that the evidence does not suggest that there are any particular key suppliers who would exert a constraint either as potential or as actual entrants.

162. Therefore, for the reasons set out above, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of a SLC as a result of the Merger.

Countervailing buyer power

163. In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. The CMA refers to this as a countervailing buyer power.[23]

---

[22] *Merger Assessment Guidelines*, from paragraph 5.8.1.
[23] *Merger Assessment Guidelines*, paragraph 5.9.1.

164. The Parties submitted that their customers possess countervailing buyer power. In particular, they claim this is the case of the large cruise, oil and gas, container shipping and ship management companies which exercise their buyer power during price negotiations via their sophisticated procurement departments.

165. As set out above, the CMA has received evidence from third party customers stating that there are impediments to switching between suppliers, such as substantial switching costs. Further, many customers who responded to the CMA's merger investigation did not consider there were alternative suppliers for those products for which the CMA found competition concerns.

166. Considering all these factors, the CMA considers that the evidence does not suggest that there is sufficient buyer power to prevent a realistic prospect of a SLC as a result of the Merger.

Third party views

167. The CMA contacted customers, competitors and distributors of the Parties as well as re-distributors and potential entrants in any of the overlap markets.

168. From the customers that responded to the CMA's market testing, just over half expressed concerns about the Merger. The most common concern was that Wilhelmsen and Drew Marine are two major players in these markets and, after the Merger, there will be very few suppliers with a worldwide presence offering the same range of products.

169. Most competitors that responded to the CMA's market testing identified Wilhelmsen as a strong competitor. Half of these competitors expressed concerns with respect to the impact of the Merger stating that Wilhelmsen will have more control of the market and after the Merger customers would have less choice of products supplied worldwide.

170. No gas suppliers that responded to the CMA's market testing raised any competition concerns in respect of this Merger.

171. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

172. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition as a result of horizontal unilateral effects in the UK and on an

EEA-wide basis in relation to: (i) the supply of marine water treatment chemicals; (ii) the supply of marine cleaning chemicals; and (iii) the supply of marine fuel oil chemicals.

Exceptions to the duty to refer

173. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33(2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference (the ***de minimis* exception**). The CMA has considered below whether it is appropriate to apply the *de minimis* exception to the present case.

Markets of insufficient importance

174. In considering whether to apply the *de minimis* exception, the CMA is required to consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market(s) concerned, taking into account also the likelihood that harm will arise, the magnitude of competition potentially lost and the duration of such effects.[24] This assessment relates to the impact of the Merger in the UK even when considering markets which may be broader in geographic scope.

'In principle' availability of undertakings in lieu

175. The CMA's general policy, regardless of the size of the affected market, is not to apply the *de minimis* exception where clear-cut undertakings in lieu of a reference could, in principle, be offered by the parties to resolve the concerns identified.[25]

176. In order for an undertaking in lieu to be available in principle it must be

(a) sufficiently clear-cut; and

(b) not wholly disproportionate in relation to the concerns identified.[26]

177. Clear-cut undertakings in lieu will not in principle be available if the competition concerns arising from the merger relate to such an integral part of the transaction that to remedy them via structural divestment would be

[24] *Mergers: Exception to the duty to refer in markets of insufficient importance*, (CMA 64), 16 June 2017, paragraph 16..
[25] *Mergers: Exception to the duty to refer in markets of insufficient importance*, paragraph 21.
[26] *Mergers: Exception to the duty to refer in markets of insufficient importance*, paragraphs 22-2.27

tantamount to prohibition of the merger.[27] In most cases, a clear-cut undertaking in lieu will involve a structural divestment.

178. The CMA's competition concerns relate to the supply of marine cleaning chemicals, marine water treatment chemicals and marine fuel oil treatment chemicals. The CMA considered whether the Parties could have divested the overlapping businesses in the UK to an independent third party.

179. The Parties submitted that a divestment is not available in the current transaction because Wilhelmsen is not acquiring a readily ascertainable UK (or EEA-wide) business that focuses on serving UK-based customers or customers calling at UK ports. **[✂]**. Divesting these contracts would not amount to a clear-cut undertaking that resolves the CMA's concerns because customers could relatively quickly and easily shift demand away from the divestment purchaser in light of the lack of exclusivity or minimum volume or value commitments in the relevant framework agreements. The Parties added that the only potential clear-cut undertaking would be a divestment of the entire Drew Marine business, which would be disproportionate in relation to any potential concerns that the CMA has.

180. For these reasons, the CMA therefore does not consider that an 'in principle' clear-cut undertaking in lieu is available in this case.

Relevant factors

181. The CMA will consider the likely level of consumer harm by reference to a number of factors when deciding whether or not to apply the *de minimis* exception: the size of the market, the strength of the CMA's concerns that harm will occur as a result of the merger, the magnitude of competition that would be lost by the merger, and the likely durability of the merger's impact.[28] The CMA will also consider the wider implications of a *de minimis* decision.[29] Each is considered in turn below.

Market size

182. Based on the market share model provided by the Parties, and as adjusted by the CMA to reflect Wilhelmsen's internal assumptions, the CMA found that the total size of the affected market in the UK for (a) the supply of water treatment chemicals, (b) the supply of marine cleaning chemicals, and (c) the supply of fuel oil treatment chemicals is £[3-4]m, £[4-5]m and £[2-3]m, respectively. In

[27] *Mergers: Exception to the duty to refer in markets of insufficient importance*, paragraph 25.
[28] *Mergers: Exception to the duty to refer in markets of insufficient importance*, paragraph 28.
[29] *Mergers: Exception to the duty to refer in markets of insufficient importance*, paragraph 40-44.

considering the assumptions in the share of supply calculations, the CMA believes it is more likely to be the case that the market size figures in this section are an overestimate. As such, the CMA's assessment of impact of the Merger in the UK, as set out below, is likely to be on the cautious side.

183. With an aggregate size of approximately £[9-10] million, this is at the middle of the revised £5 million to £15 million range within which the CMA typically undertakes a broad cost/benefit analysis in considering whether to exercise its discretion to apply the *de minimis* exception.[30]

Strength of the CMA's concerns

184. The CMA may attach weight to the strength of its belief regarding the likelihood that the merger will have an anti-competitive effect. As set out in paragraph 154, the CMA believes that it is the case that the Merger gives rise to a realistic prospect of a substantial lessening of competition. However, the evidence is not comprehensive enough to raise concerns above the minimum level required to make a reference.

Magnitude of competition lost

185. The Parties target the same customers, and those customers do not appear to have strong alternatives in the affected markets. This would usually suggest that a substantial amount of competition will be lost as a result of the Merger in those product categories where the CMA has identified an SLC, in particular, for larger customers with a requirement for supplies across a broader EEA-wide (or global) distribution network.

186. However, the CMA considered that there will be other competitors offering these products and services on an EEA-wide and global basis, such as Marichem. The CMA has also taken into account that there is a long tail of remaining regional and national competitors remaining in the market and from whom larger customers could multisource.

187. As a result of these factors, the CMA believes that the magnitude of competition lost may be limited in the longer term.

[30] *Mergers: Exceptions to the duty to refer in markets of insufficient importance guidance,* paragraph 3.

Durability

188. The CMA may consider whether the merger's impact will be limited because technological or market transformation will render the merger effect relatively short-lived.[31]

189. The Parties argued that a network of around 20-30 ports would be sufficient to be considered a global player. They have provided a number of potential entrants, companies that could expand, and highlighted that customers with a dual sourcing strategy may be incentivised to support entrants.

190. However, the CMA does not have conclusive evidence as to whether this entry will arise in the next two years.

Replicability

191. The CMA will be less likely to apply this discretion where it believes that the merger in question is one of a potentially large number of similar mergers that could be replicated across the sector in question.[32]

192. The CMA considers that this is not one of a large number of similar mergers that could be replicated across the marine chemicals sector. Moreover, the CMA would continue to review mergers in this sector and which may have more significant impact on the UK. The CMA therefore does not consider that the de minimis decision is likely to be applicable in similar markets across the sector.

Conclusion on the application of the de minimis exception

193. Taking all the above factors into consideration, the CMA believes that the market concerned in this case is not of sufficient importance to justify the making of a reference. As such, the CMA believes that it is appropriate for it to exercise its discretion to apply the *de minimis* exception.

Decision

194. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (ii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the UK. However, pursuant to section 22(2)(a) of the Act, the

[31] *Mergers: Exception to the duty to refer in markets of insufficient importance*, paragraphs 38-39.
[32] *Mergers: Exception to the duty to refer in markets of insufficient importance*, paragraph 41.

CMA believes that the market concerned is not of sufficient importance to justify making a reference.

195. The Merger will therefore **not be referred** under section 33 of the Act.

Joel Bamford
Director, Mergers
Competition and Markets Authority
6 September 2017

ANNEX I

1. For each market, the Parties submitted a model which calculated market shares using a novel methodology, although one which is used in Wilhelmsen's ordinary course of business. **[✂]**.

2. This model relies on a number of assumptions, however not all the assumed parameters were sufficiently justified to the CMA. In addition, Wilhelmsen's internal documents show that they used different values for at least one key assumption in the model submitted to the CMA compared to the model they use internally. Wilhelmsen's internal documents suggest that the values used in the model it submitted to the CMA may cause the estimates of total market sizes to be inaccurate.

3. The CMA was able to adjust the model using the resources supplied by the Parties' to use the same assumption as in Wilhelmsen's internal model. This adjustment had the effect of decreasing the estimated size of each market, and therefore increasing the market shares of the Parties, relative to the figures they submitted.

4. Even with this adjustment, the CMA considers that the assumptions underlying the model are strong and not fully tested. The Parties also noted limitations of the model, such **[✂]**. As a result, the CMA has only been able to place limited weight on the figures, treating them as at best ballpark figures subject to substantial uncertainty. The CMA has not been able to rule out the true market shares being higher than suggested in the model.

5. These concerns apply equally for the figures quoted for each market discussed above, with the exception of fuel oils where the uncertainty is much greater. This is because **[✂]**.