

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**FEDERAL TRADE COMMISSION,**  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Plaintiff,

v.

**WILH. WILHELMSSEN HOLDING ASA**  
Strandveien 20, N-1324  
Lysaker, Norway

**WILHELMSSEN MARITIME  
SERVICES AS**  
Strandveien 20, N-1324  
Lysaker, Norway

**RESOLUTE FUND II, L.P.**  
399 Park Avenue, 30th Floor  
New York, NY 10022

**DREW MARINE INTERMEDIATE II B.V.**  
Pesetastraat 5, 2991 XT  
Barendrecht, Netherlands

and

**DREW MARINE GROUP, INC.**  
100 South Jefferson Road  
Whippany, NJ 07981

Defendants.

Civil Action No. 1:18-cv-00414-TSC



**AMENDED COMPLAINT FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION PURSUANT TO  
SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys, petitions this Court for a temporary restraining order and preliminary injunction

enjoining defendants Wilh. Wilhelmsen Holding ASA and Wilhelmsen Maritime Services AS (collectively “Wilhelmsen”) and Resolute Fund II, L.P., Drew Marine Intermediate II B.V., and Drew Marine Group, Inc. (collectively “Drew”), including their agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures, from consummating their proposed acquisition (the “Acquisition”). Plaintiff seeks this provisional relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). Absent such provisional relief, Wilhelmsen and Drew (collectively, “Defendants”) would be free to consummate the merger on February 27, 2018 at 12:00 a.m. EST.

Plaintiff requires the aid of this Court to maintain the status quo and prevent interim harm to competition during the pendency of an administrative proceeding on the merits. The Commission has already initiated that administrative proceeding pursuant to Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18, 21, and Section 5 of the FTC Act, 15 U.S.C. § 45, by filing an administrative complaint on February 22, 2018. Pursuant to FTC regulations, the administrative proceeding on the merits will begin five months from the date of that filing (*i.e.*, on July 23, 2018). That administrative proceeding will determine the legality of the Acquisition and will provide all parties a full opportunity to conduct discovery and present testimony and other evidence regarding the likely competitive effects of the Acquisition.

#### **NATURE OF THE CASE**

1. Marine water treatment chemicals are chemicals used aboard vessels to prevent corrosion, remove impurities, and enhance the operation of a vessel’s operational systems—primarily the vessel’s boiler water or engine cooling water systems.

2. Defendants are the two largest suppliers of marine water treatment chemicals and related services in the world.

3. Defendants' customers include owners and operators of fleets of globally-trading vessels that call in ports around the world ("Global Fleets"). Global Fleet customers seek marine water treatment chemical suppliers with global sales, delivery, and service presence.

4. By a wide margin, Defendants are the two leading water treatment suppliers to Global Fleets.

5. Defendants are each other's closest competitor. Defendants recognize this closeness of competition. For example, Drew's CEO agrees that Wilhelmsen is Drew's "biggest competitor" and Wilhelmsen refers to Drew internally as its "key global competitor."

6. Defendants are each other's closet competitor on many important dimensions of competition for the water treatment business of Global Fleets including:

- Scope, quality, consistency, and reliability of water treatment product and service offerings;
- Technical service capability;
- Global distribution footprint; and
- The ability to offer their customers a full range of other marine products for vessels through their global distribution footprint, such as marine gases, marine cleaning chemicals, fuel treatment chemicals, and refrigerants.

7. Direct, head-to-head competition between Wilhelmsen and Drew provides substantial benefits to Global Fleets in the form of lower prices and better service. If consummated, the Acquisition would eliminate that competition, threatening significant harm to Global Fleets from lost competition. As one Drew employee put it, a potential merger between Wilhelmsen and Drew "could increase our ability to charge far better prices and win across all segments."

8. Defendants supply marine water treatment chemicals and services to a variety of Global Fleets, consisting of various large vessels including tankers, container ships, bulk carriers, cruise ships, and military support vessels.

9. Defendants sell their water treatment chemicals to Global Fleets as part of a “program” or “solution” that includes not only the individual chemical blends, but also customer service, worldwide delivery capabilities, and technical services, such as on-board technical visits, training for crew, testing, and technical analysis. In other words, the “products” that Defendants provide to Global Fleets are not simply chemicals but include a suite of associated services and capabilities.

10. Global Fleets typically seek a marine water treatment chemical supplier with a sophisticated and reliable global logistics operation capable of delivering a consistent product to ports around the world.

11. Global Fleets tend to arrange to purchase marine water treatment chemicals either through a formal request for proposal (“RFP”) process or through direct negotiations. Defendants consistently compete head-to-head in such proceedings. They are often the two finalists in RFPs or other negotiations to supply Global Fleets because they have the broadest global networks with consistent products and services, the best prices across ports, the strongest reputations for quality and consistency, and the highest levels of customer service. Owners and operators of Global Fleets often use Defendants’ similar offerings to pit one Defendant against the other in negotiations to obtain lower prices and better service. Indeed, both Defendants frequently lower prices, increase discounts, and offer additional incentives to take business away from each other and to avoid losing business to each other. For many Global Fleets, Defendants are the two best options for the supply of marine water treatment chemicals and services.

According to one Drew document, “Drew Marine has essentially only one global competitor – Wilh. Wilhelmsen Holding ASA.”

12. Other marine water treatment chemical suppliers present significant disadvantages for Global Fleets as compared to Defendants. Regional and local suppliers are generally perceived to offer lower quality products with less reliable product consistency, to have more limited service capabilities, and to face logistical challenges when serving Global Fleets. As one Wilhelmsen employee explained, “most of the biggest opportunities we lose are to Drew as small competitor[s] often cannot handle the amount of business or the trading pattern of those customers.” Indeed, regional and local marine chemical suppliers have smaller distribution footprints, and to the extent that they serve customers outside their primary geographies, they frequently have higher prices or offer more limited services. While some of these suppliers may claim to possess a “global network,” they often have very limited sales outside of their primary region. As a result of their various limitations, local and regional suppliers have very modest overall sales of these products today, and have significantly smaller shares of sales to Global Fleets than either Defendant.

13. The Acquisition would create a firm with a dominant share of the relevant market and significantly increase market concentration. The relevant market is the supply of marine water treatment chemicals and services to Global Fleet customers. Post-Acquisition, Wilhelmsen would control at least 60% of the relevant market. The next-largest competitor would possess less than 5% of the relevant market. Under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”), a post-merger market-concentration level above 2500 points, as measured by the Herfindahl-Hirschman Index (“HHI”), and an increase in market concentration of more than 200 points renders a merger

presumptively unlawful. Post-Acquisition market concentration would be at least 3600 by revenue, and would increase HHIs in an already concentrated market by multiples above 200 points. Thus, under the Merger Guidelines, the Acquisition is presumptively unlawful.

14. New entry or expansion by existing producers would not be timely, likely, or sufficient to counteract the anticompetitive effects of the Acquisition. Owners and operators of Global Fleets have many demands of their suppliers of marine water treatment chemicals and services that collectively impose substantial barriers to entry. To replace the competitive significance of Drew in the market, a potential entrant would need to establish a worldwide distribution network, strong customer service, marine engineering services, high-quality and consistent products, specialized testing and dosing equipment, a strong brand, and an established reputation for excellence, as well as obtain both manufacturer approvals and government safety and regulatory approvals. Expansion or repositioning by the remaining firms sufficient to offset the Acquisition's anticompetitive effects is also unlikely. The next-closest competitors in the supply of water treatment chemicals and services are a fraction of the size of Wilhelmsen or Drew, and it is unlikely they will be able to grow to replace the competitive significance of Drew in a timely manner.

15. Defendants cannot show cognizable merger-specific efficiencies that would offset the likely and substantial competitive harm resulting from the Acquisition.

16. On February 22, 2018, by a 2-0 vote, the Commission found reason to believe that the Acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially reducing competition. An administrative complaint was filed on that same day.

17. A temporary restraining order enjoining the Acquisition is necessary to preserve the Court's ability to afford full and effective relief after considering the Commission's

application for a preliminary injunction. The parties have stipulated to the Court's entry of such an order. Preliminary injunctive relief is similarly necessary to preserve the status quo and protect competition during the Commission's ongoing administrative proceeding. Allowing the Acquisition to proceed would harm consumers and undermine the Commission's ability to remedy the anticompetitive effects of the Acquisition if it is found unlawful after a full trial on the merits and any subsequent appeals.

### **JURISDICTION AND VENUE**

18. This Court's jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and under 28 U.S.C. §§ 1331, 1337, and 1345. This is a civil action arising under the Acts of Congress protecting trade and commerce against restraints and monopolies, and is brought by an agency of the United States authorized by an Act of Congress to bring this action.

19. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part;

Whenever the Commission has reason to believe –

- (1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
- (2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public – the Commission by any of its attorneys designated by it for such purpose may bring suit in a district of the United States to enjoin any such act or practice. Upon a proper showing that weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond . . .

20. Defendants are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

21. The FTC Act, 15 U.S.C. § 53(b), authorizes nationwide service of process, and personal jurisdiction exists where service is effected pursuant to a federal statute. Fed. R. Civ. P. 4(k)(1)(C). Defendants are therefore subject to personal jurisdiction in the District of Columbia, and they have expressly consented to such personal jurisdiction in this case. Venue is proper in the District of Columbia under 28 U.S.C. § 1391(c)(3), as well as under 28 U.S.C. § 1391(c)(2) and 15 U.S.C. § 53(b).

### **THE PARTIES AND THE PROPOSED ACQUISITION**

22. Plaintiff, the Federal Trade Commission, is an administrative agency of the United States government, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. §§ 41 *et seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

23. Defendant Wilhelmsen is the largest supplier of water treatment chemicals and services to Global Fleets around the world. Defendant Wilhelmsen Maritime Services AS is a wholly owned subsidiary of Defendant Wilh. Wilhelmsen Holding ASA, a publicly traded corporation, headquartered in Norway with 4,500 employees. Wilhelmsen and its predecessors have developed a decades-long reputation for excellence in the supply of water treatment chemicals and services. Wilhelmsen had 2016 global revenues of approximately [REDACTED], of which approximately [REDACTED] were for water treatment chemicals and services, and at least [REDACTED] were for water treatment chemicals and services to Global Fleets. Wilhelmsen supplies marine products at 2,200 ports worldwide through a network of approximately 180 stock points.

24. Defendant Drew is the second-largest supplier of water treatment chemicals and services to Global Fleets around the world. Established in 1928, Drew has developed its reputation as a quality supplier of marine products and services over more than 80 years. Drew has approximately 500 employees. Defendants Drew Marine Intermediate II B.V. and Drew Marine Group, Inc. are part of the portfolio of Defendant The Resolute Fund II, L.P., a private equity fund managed by The Jordan Company. Drew earned global revenues of approximately [REDACTED] in 2016, of which approximately [REDACTED] were for water treatment chemicals, and at least [REDACTED] were for water treatment chemicals and services to Global Fleets. Drew serves more than 900 ports worldwide through a network of 81 warehouses.

25. Pursuant to a Share Purchase Agreement, dated April 27, 2017, Wilhelmsen proposes to acquire 100% of the voting securities of Drew for approximately \$400 million in cash.

26. Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, and a timing agreement between Defendants and Commission staff, unless temporarily restrained and preliminarily enjoined by this Court, Defendants would be free to consummate the Acquisition at 12:00 a.m. on February 27, 2018.

27. On February 22, 2018, by a 2-0 vote, the Commission found reason to believe that the Acquisition would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. On the same day, the Commission commenced an administrative proceeding on the antitrust merits of the Acquisition before an Administrative Law Judge, with the merits trial scheduled to begin on July 23, 2018. The ongoing administrative proceeding provides a forum for all parties to conduct discovery, followed by a merits trial with up to 210 hours of live testimony. *See* 16 C.F.R. § 3.41 (2014).

The decision of the Administrative Law Judge is subject to appeal to the full Commission, which, in turn, is subject to judicial review by a United States Court of Appeals.

28. In authorizing the filing of this complaint, the Commission has determined that (1) it has reason to believe the Acquisition would violate the Clayton Act and the FTC Act by substantially lessening competition in one or more lines of commerce, and (2) an injunction of the Acquisition pending the resolution of the Commission's administrative proceedings and any appeals will promote the public interest, so as to minimize the potential harm to customers and preserve the Commission's ability to grant an adequate remedy if it concludes, after the administrative proceeding, that the Acquisition is unlawful.

#### **MARKET PARTICIPANTS AND INDUSTRY DYNAMICS**

29. Wilhelmsen and Drew are by far the largest competitors for the supply of marine water treatment chemicals and services to Global Fleets. In addition to water treatment products, Defendants sell maritime customers several additional categories of products, including cleaning chemicals, fuel treatment chemicals, welding gases, and refrigerants.

30. After the parties, the next largest supplier is Greek-based Marichem-Marigases ("Marichem")—a distant third to Wilhelmsen and Drew with approximately [REDACTED] employees. Marichem earned global revenues of approximately [REDACTED] in 2016, of which approximately [REDACTED] were water treatment revenues. Marichem is considerably more popular among Greek shipping customers than it is anywhere else in the world: [REDACTED] of Marichem's top ten customers by revenue are Greek shipping companies.

31. The remaining suppliers of marine water treatment chemicals and services to Global Fleets are even smaller than Marichem. These fringe market participants are significantly smaller than Defendants and lack comparable global distribution networks and other attributes

that Global Fleet customers desire. Further, many fringe market participants specialize in niche product offerings, such as tank cleaning chemicals, and devote only a small percentage of their business to the sale of water treatment products.

32. Given these dynamics, many Global Fleets owners and operators view Defendants as their two best options for the supply of water treatment chemicals and services, and view Marichem as a distant third.

### **RELEVANT MARKET**

33. The relevant market is the global supply of marine water treatment chemicals and services to Global Fleets. Global Fleets operate in multiple regions around the world and seek suppliers with global sales, service, and delivery capabilities. A hypothetical monopolist of the supply of marine water treatment chemicals and services to Global Fleets would find it profit-maximizing to impose at least a small but significant and non-transitory increase in price (“SSNIP”).

#### **A. Relevant Product Market**

34. The relevant product market in which to assess the effects of the proposed acquisition is the supply of marine water treatment chemicals and services to Global Fleets.

35. Marine water treatment chemicals are chemicals used aboard ships to prevent corrosion, remove impurities, and enhance the operation of the ship—primarily, the ship’s boiler water or engine cooling water systems.

36. Marine water treatment chemicals have distinct uses from any other category of product. Defendants analyze their business and market their products for marine water treatment separately from other products. Defendants sell their water treatment chemicals as part of a “program” or “solution” for marine customers that includes not only the individual chemical

blends, but also related technical services and other value-added offerings. For example, both Defendants offer their water treatment customers: on-board technical visits to troubleshoot problems; training for the crew in the correct use of the products; water testing kits optimized to match the chemistry of their products; software to log and analyze test results; and sophisticated and reliable global logistics operations capable of taking orders from Global Fleets and making deliveries in ports around the world without undue delay. Defendants also provide their customers with consistent water treatment chemicals throughout their distribution network.

37. There are no reasonably interchangeable substitutes for marine water treatment chemicals and services, and vessels could not realistically switch to other products in the face of a small, but significant and non-transitory increase in price (“SSNIP”).

38. Global Fleets comprise a distinct set of customers for the supply of marine water treatment chemicals and services. Global Fleets are comprised of vessels that call in ports around the world and seek suppliers with global sales, service, and delivery capabilities.

39. Global Fleets may consist of various types of vessels including tankers, container ships, bulk carriers, cruise ships, and military support vessels.

40. Global Fleets also typically purchase water treatment chemicals and services pursuant to framework agreements reached with suppliers through RFPs or through direct negotiations. These individual negotiations enable price discrimination based on a customer’s status as a Global Fleet.

41. Global Fleets have distinct characteristics within the broader universe of maritime vessels, and Defendants recognize and claim to satisfy their distinct demands. Global Fleets have a number of key attributes, including, but not limited to:

- a. Worldwide Operations: Global Fleets operate in ports in multiple regions around the world and seek suppliers with global sales and delivery capability.

- b. Desire to Consolidate Spending in One or Two Suppliers: Global Fleet owners and operators want to standardize operations across their fleet by relying on one or two primary suppliers for water treatment. Consolidating suppliers offers administrative and operational efficiencies and enables Global Fleets to obtain the best pricing with higher purchase volumes.
- c. Consistency and Reliability: Owners and operators of Global Fleets value a water treatment chemical's consistency and reliability that enables them to run their international business or organizations more efficiently. They are unlikely to turn to untested suppliers that cannot guarantee consistent water treatment products globally and lack a reputation for consistency and reliability because doing so would require the fleets to assume added risks.
- d. Integrated Products and Services: Global Fleet owners and operators desire cost-effective water treatment "programs" or "solutions" as opposed to individual or spot purchases of chemicals. Technical and customer service availability are an important part of the water treatment programs or solutions for Global Fleets.

42. Defendants recognize that Global Fleets are distinct from smaller local or regional shippers. For example, Wilhelmsen defines its "Core" market as "[l]arger sailing vessels trading globally".

43. Thus, the supply of marine water treatment chemicals to Global Fleets is the relevant product market in which to analyze the Acquisition's likely effects.

#### **B. Relevant Geographic Market**

44. The relevant geographic market is global. The targeted customers in the relevant product market are Global Fleets that seek suppliers with a global network. Because these customers seek global suppliers, the relevant geographic market is also global.

#### **MARKET STRUCTURE AND THE MERGER'S PRESUMPTIVE ILLEGALITY**

45. Wilhelmsen and Drew are by far the two largest suppliers of marine water treatment chemicals and services to Global Fleets. Post-Acquisition, the relevant market would

be highly concentrated and would be significantly more concentrated as a result of the Acquisition.

46. The Merger Guidelines and courts often measure concentration using HHIs. HHIs are calculated by totaling the squares of the market shares of every firm in the relevant market pre and post-Acquisition. Under the Merger Guidelines, a merger is presumed likely to create or enhance market power—and is presumptively illegal—when the post-merger HHI exceeds 2,500 and the merger increases the HHI by more than 200 points.

47. The market for the supply of water treatment chemicals and services to Global Fleets is already highly concentrated, and the Defendants control the majority of sales. Post-Acquisition, the market would be substantially more highly concentrated than it is today. Post-Acquisition, Wilhelmsen would control more than 60% of this relevant market. Marichem, the next largest competitor, would possess less than 5% of the relevant market. Post-Acquisition, the HHI would be at least 3,600, far exceeding the 2,500 under the Guidelines for a highly concentrated market, and would increase HHIs in an already highly concentrated market by multiples over 200 points. Thus, the Acquisition would result in concentration well above the amount necessary to establish a presumption of competitive harm.

48. The Acquisition is presumptively unlawful under relevant case law and the Merger Guidelines.

**ANTICOMPETITIVE EFFECTS: THE MERGER WOULD ELIMINATE VITAL HEAD-TO-HEAD COMPETITION BETWEEN WILHELMSEN AND DREW**

49. Defendants are each other's closest competitors. They are the two largest suppliers of marine water treatment chemicals and services to Global Fleets in the world. The scale and capabilities of Wilhelmsen and Drew are similarly matched to one another, and are

much larger and more robust than that of the next-largest marine water treatment supplier, Marichem.

50. Wilhelmsen and Drew offer a collection of product and service attributes that no other supplier of marine water treatment chemicals and services can match – a global distribution footprint, strong brands, consistent and quality products available globally at competitive prices, and superior technical services.

51. Wilhelmsen and Drew also offer their customers the ability to purchase a full range of maritime products in addition to water treatment chemicals, such as fuel treatment chemicals, marine cleaning products, and marine gases. Many Global Fleets value the ability of Wilhelmsen and Drew to provide this full suite of products along with the supply of marine water treatment chemicals and services.

52. Defendants acknowledge that they are each other's closest competitors and the two leading suppliers of marine water treatment chemicals and services to Global Fleets. As one of Drew's own executives testified, "there's no question that Drew Marine and Wilhelmsen are the two leading suppliers in this area. So we're often competing with Wilhelmsen in the accounts that we're trying to acquire or retain."

53. Defendants are most frequently the first and second choice for Global Fleets when selecting a marine water treatment chemical and service supplier. Defendants predominantly win Global Fleet business from, and lose Global Fleet business to, each other.

54. Defendants compete aggressively with each other on price and non-price terms to win and retain the business of Global Fleets. Wilhelmsen and Drew frequently must lower prices, increase discounts, offer free chemicals or other monetary incentives, and improve their offers to customers on non-price terms to win business from each other.

55. Global Fleets benefit from the competition between Defendants. That competition enables customers to pit Wilhelmsen and Drew against each other in negotiations to obtain lower prices.

56. Wilhelmsen and Drew also compete aggressively on non-price terms, such as technical service, network breadth, and product quality and innovation, to win the business of Global Fleets. Defendants currently risk losing business to each other if Global Fleet owners and operators perceive one Defendant's product or service as inferior. After the Acquisition, Wilhelmsen would face substantially less competition for Global Fleets, and would have less incentive to improve, or even maintain, its current level of product quality and service to win or keep business.

57. The Acquisition would eliminate this intense head-to-head competition for Global Fleets. Post-Acquisition, Wilhelmsen would face significantly less meaningful competition than it does today. Wilhelmsen would not need to compete as aggressively on price and non-price terms to win or keep the business of many Global Fleets, and would have the incentive and ability to raise prices and lower service quality as a result of its significantly enhanced market power.

58. Most Global Fleets consistently view Wilhelmsen and Drew as the two largest and best competitors for the supply of marine water treatment chemicals and services, while viewing Marichem as a distant third. The Defendants' business documents reveal that they also view Marichem as an inferior competitor, with a lower-quality product offering.

59. Fringe market participants will be unable to make up for the competition lost as a result of the Acquisition in a timely manner. Global Fleet owners and operators are often unwilling to use these suppliers due to their lack of a global distribution network; lack of

technical service offerings; higher prices to deliver to Global Fleets' network of ports; lower quality or less consistent products; and inability to provide a full suite of marine products, such as fuel treatment products, marine cleaning products, and marine gases, in addition to water treatment chemicals and services. Due to the importance of marine water treatment chemicals to vessels, customers are often unwilling to use new, untested suppliers. In addition, many of these smaller suppliers specialize in niche areas and offer smaller product portfolios. Many suppliers specialize in tank cleaning chemicals, with minimal sales in water treatment chemicals.

60. Ship chandlers are retailers that fill a role similar to general stores for shipping vessels. Ship chandlers are not meaningful alternatives for the supply of marine water treatment chemicals and services for most Global Fleets. Ship chandlers do not specialize in marine water treatment chemicals, and when they do sell marine water treatment chemicals, they often sell them at a much higher price than when customers buy from Wilhelmsen or Drew directly. When customers request marine water treatment chemicals from ship chandlers, ship chandlers often tell them to go to Wilhelmsen or Drew directly.

61. Industrial chemical suppliers are not viable alternative suppliers for most Global Fleets. While some industrial chemical companies do manufacture water treatment chemicals for land-based industrial uses, these firms do not typically supply marine customers and generally lack the dedicated marine sales force, marine-focused technical service and service offerings, and global maritime distribution networks that Defendants offer their customers. As a result, such firms do not meaningfully compete with Defendants today and would not likely constrain the combined firm's exercise of market power post-Acquisition.

### **LACK OF COUNTERVAILING FACTORS**

62. Defendants cannot demonstrate that new entry or expansion by existing firms would be timely, likely, or sufficient to offset the anticompetitive effects of the Acquisition.

63. Global Fleets have many demands from suppliers of marine water treatment chemicals and services that collectively impose significant barriers to entry and expansion. In particular, Global Fleets seek a supplier with a global distribution network; the ability to provide consistent, high-quality products; strong technical service and customer service capabilities; equipment manufacturer approvals; and the relevant regulatory and safety approvals. Additionally, customers place value on the reputation of a water treatment supplier's brand, and tend to stick with products and brands that they know in order to lessen the risk of damage associated with using an untested product.

64. Expansion by the remaining firms post-Acquisition that would defeat anticompetitive effects is unlikely.

65. Defendants cannot demonstrate cognizable merger-specific efficiencies that would be sufficient to rebut the strong presumption and evidence of the Acquisition's likely significant anticompetitive effects.

### **LIKELIHOOD OF SUCCESS ON THE MERITS, BALANCE OF EQUITIES, AND NEED FOR RELIEF**

66. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission, whenever it has reason to believe that a proposed acquisition is unlawful, to seek preliminary injunctive relief to prevent consummation of the acquisition until the Commission has had an opportunity to adjudicate the acquisition's legality in an administrative proceeding. In deciding whether to grant relief, the Court must balance the likelihood of the Commission's ultimate success on the merits against the public equities. The principal public equity weighing in favor of

issuance of preliminary injunctive relief is the public interest in effective enforcement of the antitrust laws.

67. The Commission is likely to succeed in proving that the effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, or Section 5 of the FTC Act, 15 U.S.C. § 45. In particular, the Commission is likely to succeed in demonstrating, among other things, that:

- a. The Acquisition would have anticompetitive effects in the market for the supply of marine water treatment chemicals and services to Global Fleets;
- b. Substantial and effective entry or expansion in this market is difficult and would not be timely, likely, or sufficient to offset the anticompetitive effects of the Acquisition; and
- c. The efficiencies asserted by Defendants are insufficient as a matter of law to justify the Acquisition.

68. Preliminary relief is warranted and necessary. Should the Commission rule, after the full administrative proceeding, that the Acquisition is unlawful, reestablishing the status quo ante of vigorous competition between Wilhelmsen and Drew would be difficult, if not impossible, if the Acquisition has already occurred in the absence of preliminary relief. Moreover, in the absence of relief from this Court, substantial harm to competition would likely occur in the interim, even if suitable divestiture remedies were obtained later.

69. Accordingly, the equitable relief requested here is in the public interest. Wherefore, the Commission respectfully requests that the Court:

1. Temporarily restrain and preliminarily enjoin Defendants from taking any further steps to consummate the Acquisition, or any other acquisition of stock, assets, or other interests of one another, either directly or indirectly;
2. Retain jurisdiction and maintain the status quo until the administrative proceeding that the Commission has initiated is concluded; and
3. Award such other and further relief as the Court may determine is appropriate, just, and proper.

Dated: March 6, 2018

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 6th day of March, 2018, I served the foregoing on the following counsel via electronic mail:

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