IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WILH. WILHELMSEN HOLDING ASA,

WILHELMSEN MARITIME SERVICES AS,

RESOLUTE FUND II, L.P.,

DREW MARINE INTERMEDIATE II B.V.,

and

DREW MARINE GROUP, INC.,

Defendants.

Civil Action No. 1:18 CV 00414 (TSC)
PUBLIC VERSION

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S STATEMENT OF CLAIM

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") (together with Wilhelmsen, "Defendants") hereby answer Plaintiff Federal Trade Commission's ("FTC") Complaint and assert affirmative and other defenses.

Any allegation in the Complaint that is not expressly admitted below is denied.

PRELIMINARY STATEMENT

Wilhelmsen's proposed acquisition of Drew does not violate section 7 of the Clayton Act, 15 U.S.C. § 18, or section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The market for the common chemicals that form the basis for the FTC's claims is highly competitive, with many sellers competing against Wilhelmsen and Drew. The merger will enable those existing competitors to expand their footprints to replace Drew and will encourage new competitors to enter since barriers to entry are low.[1] This, along with the efficiencies generated by the merger, will lead to lower prices for customers.

Defendants will show that the transaction will bring about merger-specific efficiencies (hence the reason for the deal), without harming competition or customers. Indeed, based on economic and other evidence that Defendants will present to the Court, Defendants will realize an [redacted] reduction in the combined firm's cost basis, which equals a [redacted] reduction in Drew's cost basis. Wilhelmsen has a proven track record of achieving these types of cost-savings

[1] "Entry by a single firm that will replicate at least the scale and strength of one of the merging firms is sufficient. Entry by one or more firms operating at a smaller scale may be sufficient if such firms are not at a significant competitive disadvantage." *See* Horizontal Merger Guidelines § 9.3 (2010).

and completing integration in an expeditious manner. These efficiencies are important because competition is so robust that Wilhelmsen projects that its revenue losses to competition could jeopardize as much as [redacted] of Drew's EBITDA, with a best-case scenario of retaining [redacted] of that [redacted]. In light of those economic realities, the FTC is wrong to conclude—based on a few anecdotes and out-of-context quotations—that "the effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly" in the alleged market of marine water treatment chemicals, of which Wilhelmsen and Drew collectively sell less than [redacted] per year in the United States. Compl. ¶ 67.

The FTC's view that the proposed merger is unlawful rests fundamentally on the allegation that Defendants would hold 60% of the alleged market post-merger. Compl. ¶¶ 45-48. From that premise, the Complaint asserts the acquisition is presumptively unlawful because it surpasses a 2,500-point HHI threshold. Compl. ¶ 48; *see United States v. Anthem, Inc.*, 855 F.3d 345, 349 (D.C. Cir. 2017) (providing overview of HHI). These alleged shares do not comport with the ordinary course way that Wilhelmsen and Drew view their businesses or the realities of actual competition. The drawing of the market in an apparent effort to secure a rebuttable presumption and to shift the burden to Defendants smacks of gerrymandering. To that end, the Complaint asserts that the proposed transaction will harm competition in the sale of water treatment chemicals and equipment to "Global Fleets." Although the Complaint is silent as to specific customers comprising "Global Fleets,"[2] Compl. ¶ 3, the FTC is plainly seeking to protect the alleged interests of the world's largest shipping companies in their purchases of a very narrow category of products.

[2] Defendants have sought clarification through interrogatories regarding what vessels are in the alleged "Global Fleets" as the Complaint does not identify them. The market shares alleged by the FTC demonstrate that it has not used the parties' normal course view of the market in which they compete.

The Complaint then lumps all (or at least more than one type of) the products in that category (water treatment chemicals)[3] into a single alleged product market despite the fact that one type of water treatment chemical cannot be substituted for another for the same end-use. Furthermore, sales of the different types of water treatment chemicals by the parties vary from customer to customer and vessel to vessel.

There is no basis for carving Global Fleets out of the larger market for maritime vessels and offshore platforms in which the two companies' actually compete. *See JBL Enters., Inc. v. Hjirmack Enters., Inc.*, 698 F.2d 1011, 1016 (9th Cir. 1983) ("In determining what the field of competition is, courts are not free to accept whatever market is suggested by the plaintiff, but must examine the commercial realities within the industry in question.") (citation and internal quotation marks omitted). Defendants do not in the normal course of business use the Complaint's construct of Global Fleets; rather, Defendants consider any vessel over 1,000 gross tons ("g.t.") regardless of trading patterns (i.e., global, regional, or local) to be part of the global customer base for which they compete. The evidence shows that Wilhelmsen and Drew **do not sell** water treatment chemicals to an estimated [redacted] of the over 1,000 g.t. vessels on a regular basis. In other words, excluding one-off sales to vessels that cannot fairly be considered Wilhelmsen or Drew customers, Defendants collectively serve only [redacted] of the vessels over 1,000 g.t.[4] Those figures leave the FTC well short of a presumption of illegality.

[3] Here again the Complaint is somewhat unclear as to whether the alleged product market is just chemicals for treating boiler and cooling water or also includes chemicals used for potable water, ballast water, and/or pool and spa water. We have sought clarification through interrogatories. Regardless, there is no basis for lumping any of the products.

[4] The [redacted] numbers focus only on two types of water treatment chemicals—those used to treat boiler and cooling water. The Defendants' collective shares of the other types of chemicals included in water treatment are even lower.

More fundamentally, even if the FTC's relevant market definition were correct (it is not), both sides to this lawsuit agree that under the Horizontal Merger Guidelines (2010) (hereinafter "Merger Guidelines") and settled antitrust case law, a market share of 60% or even higher does not violate antitrust law if there are no significant barriers to the entry or expansion of other competitors. This is because a firm with even a large share of a market cannot exercise market power if there are competitors waiting in the wings to which customers can readily turn to defeat an attempted price increase. The Complaint acknowledges that there are current competitors who provide "marine water treatment chemicals and services ***to Global Fleets***" *id.* ¶ 34 (emphasis added), but incorrectly dismisses them as "[r]egional and local suppliers" with "limited service capabilities." Compl. ¶¶ 12, 31.

These competitors cannot be so easily dismissed. Detailed economic analyses that the Defendants will present to the Court show that both Wilhelmsen's and Drew's lost sales divert to other competitors much more frequently than they divert to one another. Moreover, as discussed above, Wilhelmsen projects a price decrease post acquisition to stem losses to the so-called "fringe market participants." The fact that these supposedly "fringe market participants" hold 40% even of the market defined by the FTC, *id.* ¶ 13, contradicts the Complaint's assertions that "Global Fleet owners and operators are often unwilling to use these suppliers" and that these suppliers are "untested." *Id.* ¶ 59.

Incontrovertible data confirm that other suppliers of water treatment chemicals actively compete with Wilhelmsen and Drew. Furthermore, a review of these purported fringe market participants' websites reveals that they serve hundreds of ports and offer a full range of services that meet the demands of the Global Fleets alleged in the Complaint.[5]

[5] *See, e.g.*, Marichem Marigases Worldwide Services, Our Company, http://www.marichem-marigases.com/aboutus.php?ID1=OC ("Our wide range of products are available at more than 2,100

Customers face no danger of increased prices following a Wilhelmsen-Drew merger because Wilhelmsen knows that these competitors are poised to take business and appear to already be positioning themselves to replace Drew. The vessels in the Global Fleets by the FTC's own definition visit multiple ports around the world where water treatment chemicals and services can be obtained, including from large ports where even the FTC must concede "fringe market participants" already have a presence.

In addition, the FTC's "Global Fleets"—which presumably include the largest vessels in the world—could easily avoid any attempted price increase in smaller ports by merely buying more product in the larger ports. Water treatment chemicals are sold in stackable 25-liter containers (equivalent to 6.2 gallons) that last 20-30 days depending on the system they are treating, so a vessel of 1,000 g.t or more can easily stock enough containers to cover the periods between visits to larger ports where the FTC appears to concede there is no concern about a potential price increase. Vessels already logistically minimize the ports in which they purchase other goods; they could clearly also do so for water treatment chemicals.

If Defendants were no longer competitive on price, customers would look increasingly to the competitors that already serve 40% of the claimed marketplace and over [redacted] of the vessels

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ports, supplied by a distribution network of 196 stock points, 24 hours a day, 7 days a week, 365 days a year."); Vecom, Ports of Delivery, https://www.vecom-group.com/en/ports-of-delivery/ ("The Vecom Marine network covers 55 countries and almost 900 ports within these countries."); Blutec Chemicals, Welcome to BLUTEC Website, http://www.blutec.info/en/index.html (stating "capab[ility] of responding [to] every technical and commercial need in all major ports, worldwide"); Marine Care, Ports Served, http://marinecare.nl/wp-content/uploads/2017/02/Ports-Served-Full-List.pdf (identifying ports served in over 50 countries); UNIservice, Marine Chemicals, http://www.uniservicemarine.com/chemicals/ ("With production plants located in key ports around the world, UNIservice can supply even large amounts of tank cleaning chemicals in a matter of hours. UNIservice products are available worldwide in more than 900 ports[.]"); and UNIAmericas, About Us, http://uniam.net/Pages/About/about.html ("Uniservice [has] a worldwide presence with stocking locations in over 40 countries . . . [and] "offers a complete range of chemicals for tank cleaning, chemicals for the treatment of boilers and cooling systems, combustion improver additives, environmental products, general deck and engine maintenance, test kits, dosing systems and reagents").

Wilhelmsen and Drew target. *See* Fed. Trade Comm'n and U.S. Dep't of Justice, Commentary on the Horizontal Merger Guidelines 42 (Mar. 2006) (hereinafter "Commentary") (explaining with respect to National Oilwell-Varco merger that initial "serious concerns" over "very few significant competitors" and impact on "competitive effects" were alleviated by evidence "that several major customers for these products and services believed that they would be able to sponsor successful entry by committing to make purchases from firms with little or no current market presence"). Indeed, the inherently pro-competitive marketplace dynamics are the reason why Defendants project that, while the merger will result in increased efficiencies, they will need to *decrease* prices—and even then still predict losing significant revenue to competitors based in part on the admitted preference of many customers to have dual suppliers, *see* Compl. ¶ 41. Consistent with this expectation, since the announcement of the proposed merger, some of Defendants' customers have already threatened to transition or have begun transitioning business to competitors. There can be no antitrust violation under such circumstances.

Whether Wilhelmsen and Drew are currently the two largest suppliers of water treatment chemicals and services—standing alone—is unexceptional under antitrust laws. Both the case law and the FTC's Merger Guidelines make clear that high market share does not mean unlawful where there are no significant barriers to entry. *See, e.g.*, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 591 n. 15 (1986) ("[W]ithout barriers to entry into the market it would presumably be impossible to maintain supracompetitive prices for an extended time."); *United States v. Baker Hughes, Inc.*, 908 F.2d 981, 987 (D.C. Cir. 1990) ("In the absence of significant barriers, a company probably cannot maintain supracompetitive pricing for any length of time.") (citations omitted); *California v. Am. Stores Co.*, 872 F.2d 837, 842-43 (9th Cir. 1989) ("An absence of entry barriers into a market constrains anticompetitive conduct, *irrespective of*

the market's degree of concentration.") (emphasis added) (citing *United States v. Falstaff Brewing Corp.*, 410 U.S. 526, 532-33 (1973)); U.S. Dep't of Justice & FTC, Merger Guidelines § 3.0 ("Merger is not likely to create or enhance market power . . . if entry into the market is so easy that market participants, after the merger, either collectively or unilaterally could not profitably maintain a price increase above premerger levels."). Notably, "[e]ven a 100% monopolist may not exploit its monopoly power in a market without entry barriers." *Image Tech. Servs. v. Eastman Kodak Co.*, 125 F.3d 1195, 1208 (9th Cir. 1997).

Here, the absence of significant barriers to entry is a complete answer to the FTC's market-share allegations. Entry into the relevant marketplace and replacement of Drew's competitive position is both straightforward and low-risk. Firms can outsource every step of production and distribution of water treatment chemicals and the provision of associated services by using existing market infrastructures. Large global corporations (e.g., Chevron) already manufacture, sell, and deliver certain water treatment chemicals to the marine industry.[6] And third-party distribution networks are already in place to stock and deliver chemicals, as well as provide related services, on a global basis. Such facts typically augur against invocation of the antitrust laws, not in favor of blocking transactions. *See* Commentary at 41 (explaining that Department of Justice approved Playbill-Stagebill transaction even though "[p]rior to the acquisition, Playbill was the nation's largest publisher of theater programs and Stagebill was its largest competitor in many cities" because "the printing itself could be out-sourced, so an entrant did not need to incur significant sunk costs"); *id.* (explaining that FTC staff "closed its investigation" after finding "that new entrants would have relatively easy access to third-party

[6] Chevron Marine, https://www.chevron.com/operations/products-services/marine ("Chevron Marine Products serves customers at more than 500 ports in more than 40 countries."); Chevron, Chevron Marine Water Treatments, http://www.chevronmarineproducts.com/en_UK/products/xli-water-treatments.html (providing overview of products).

'co-manufacturers' for the production of the relevant products and thereby could avoid costly expenditures in developing manufacturing expertise or in building a new facility," and that "[e]ntrants also could competitively distribute their products by outsourcing those functions to third-parties").

Replication of Drew's operations is particularly easy to envision. [redacted]. Nothing stands in the way of one or more firms expanding its presence in or entering the market using the same business model as Drew. In other words, expansion, if necessary, is easy. *See Epicenter Recognition, Inc. v. Jostens, Inc.*, 81 F. App'x 910, 911 (9th Cir. 2003) ("It is apparent from the record that if Jostens should attempt to increase prices or decrease quality, Jostens' existing competitors could easily and quickly expand production and pick up the slack.").

Moreover, the Complaint's mention of Wilhelmsen's and Drew's brand recognition, goodwill, and reputation does not state a valid basis for blocking a merger. As courts have explained, a firm's reputation for offering high quality products "alone does not constitute a sufficient entry barrier" because "the existence of good will achieved through effective service"

is simply the "natural result of . . . competition." *Am. Prof'l Testing Serv., Inc. v. Harcourt Brace Jovanovich Legal & Prof'l Publ'ns, Inc.*, 108 F.3d 1147, 1154 (9th Cir. 1997) (citation and quotation marks omitted). Put another way, customer "inertia" is not a barrier to entry—especially where, as here, customers include shipping industry giants that regularly use (and according to the Complaint may in fact prefer to use, *see* Compl. ¶ 41) multiple suppliers. *Epicenter Recognition*, 81 F. App'x at 911. In any event, current competitors, most of whom have been in business for decades, already have brand recognition, goodwill, and/or good reputations, which would make any expansion even easier and more likely to succeed.

The evidence in this case is clear. There are several, longstanding, existing sellers of water treatment chemicals that today serve ocean going vessels, including vessels in the purported "Global Fleets." These competitors are ready to pounce at any opportunity created by a post-merger attempt to raise prices, and the sophisticated, large "Global Fleet" buyers of marine water treatment chemicals are particularly well situated to avoid such price increases by taking advantage of the existing set of competitors.

NATURE OF THE CASE

1. Defendants admit Paragraph 1 of the Complaint insofar as some marine water treatment chemicals are chemicals used aboard vessels to prevent corrosion, remove impurities, and enhance the operation of a vessel's operational systems. Defendants deny the remainder of Paragraph 1.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of Paragraph 2 of the Complaint.

3. Defendants admit the first sentence of Paragraph 3 of the Complaint in that their customers include, among others, owners and operators of fleets of globally trading vessels that call in ports around the world. Defendants deny the remainder of Paragraph 3.

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of Paragraph 4 of the Complaint.

5. Defendants admit that Drew's CEO stated that Wilhelmsen is Drew's "biggest competitor," but aver that the FTC's selective quotation is misleading as framed. Defendants deny the remainder of Paragraph 5.

6. Defendants deny Paragraph 6 of the Complaint.

7. Defendants admit that the statement in Paragraph 7 was made by a Drew employee, but aver that the FTC's selective quotation is misleading as framed. Defendants deny the remainder of Paragraph 7, except to the extent it contains legal conclusions to which no response is necessary.

8. Defendants admit Paragraph 8 of the Complaint insofar as they supply water treatment chemicals to a variety of vessels, among them large vessels, and among those vessels are tankers, container ships, bulk carriers, cruise ships, and military support vessels. Defendants deny the remainder of Paragraph 8.

9. Defendants deny Paragraph 9.

10. Defendants deny Paragraph 10.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 11 but acknowledge that water treatment chemicals can be purchased following a formal request for proposal process or through direct negotiations. Defendants admit that the final sentence of Paragraph 11 sets forth a statement contained in a

Drew document, although the statement is taken out of context. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second, third, fourth, and fifth sentences. Defendants deny the remainder of Paragraph 11.

12. Defendants admit that the third sentence of Paragraph 12 contains a statement made by a Wilhelmsen employee, although Defendants aver that this statement is taken out of context. Defendants deny the remainder of Paragraph 12.

13. Defendants deny Paragraph 13, except to the extent that the fourth sentence contains a legal conclusion to which no response is necessary.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of the last sentence of Paragraph 14 with respect to competitor size and capabilities. Defendants deny the remainder of Paragraph 14, except to the extent that they contain legal conclusions to which no response is necessary.

15. Defendants deny Paragraph 15, except to the extent that it contains legal conclusions to which no response is necessary.

16. Defendants deny Paragraph 16 of the Complaint, except that Defendants admit that the Commission voted to authorize staff to file an administrative complaint.

17. Defendants aver that to the extent that Paragraph 17 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny the Paragraph 17 of the Complaint.

JURISDICTION AND VENUE

18. Defendants admit that the Commission purports to bring this civil action pursuant to Section 13 of the FTC Act, Section 16 of the Clayton Act, and 28 U.S.C. §§ 1331, 1337, and 1345, and admits that the Commission is an agency of the United States. Defendants otherwise

deny Paragraph 18, except to the extent that Paragraph 18 contains legal conclusions to which no response is required.

19. Defendants admit Paragraph 19 of the Complaint.

20. Defendants aver that to the extent Paragraph 20 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants admit Paragraph 20 of the Complaint.

21. Defendants aver that to the extent Paragraph 21 of the Complaint states legal conclusions, no response is required. Defendants admit that they have expressly consented to personal jurisdiction in the District of Columbia in this case. To the extent a response is required with regard to any allegations in Paragraph 21, Defendants deny Paragraph 21 of the Complaint.

THE PARTIES AND THE PROPOSED ACQUISITION

22. Defendants admit Paragraph 22 of the Complaint.

23. Defendants are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 23. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that "at least [redacted] [of Wilhelmsen's 2016 global revenue was] for water treatment chemicals and services to Global Fleets." Defendants deny the remainder of Paragraph 23 of the Complaint.

24. Defendants are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 24. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that "at least [redacted] [of Drew's 2016 global revenue was] for water treatment chemicals and services to Global Fleets." Defendants deny the remainder of Paragraph 24 of the Complaint.

25. Defendants admit Paragraph 25 of the Complaint.

26. Defendants admit Paragraph 26 of the Complaint, insofar as it relates to whether the parties would be free under U.S. law to consummate the transaction at the time of the filing of the Complaint.

27. Defendants deny 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. Defendants admit the remainder of Paragraph 27, except that Defendants aver that administrative proceedings before the Commission frequently take a year or more to complete and that the administrative proceedings against Defendants would conclude long after the merger's deadline, given a trial of up to six weeks or more, post-trial briefing, a months-long window for the Administrative Law Judge to issue an opinion, a ruling by the Commissioners, and a potential appeal to the United States Court of Appeals for the D.C. Circuit.

28. Defendants are without knowledge or information sufficient to respond to allegations concerning the determination of the Commission. To the extent any response is required, Defendants deny Paragraph 28 of the Complaint.

PURPORTED MARKET PARTICIPANTS AND INDUSTRY DYNAMICS

29. Defendants are without knowledge or information sufficient to respond to the first sentence of Paragraph 29. Defendants admit the second sentence of Paragraph 29.

30. Defendants are without knowledge or information sufficient to respond to the allegations in Paragraph 30.

31. Defendants deny the characterization in Paragraph 31 of water treatment chemicals and services other than Defendants and Marichem as "fringe market participants." Defendants are without knowledge or information sufficient to respond to the remainder of Paragraph 31.

32. Defendants deny Paragraph 32.

PURPORTED RELEVANT MARKET

33. Defendants aver that to the extent Paragraph 33 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny Paragraph 33 of the Complaint.

A. Purported Relevant Product Market

34. Defendants deny Paragraph 34 of the Complaint, except to the extent that Paragraph 34 of the Complaint states legal conclusions to which no response is required.

35. Defendants admit Paragraph 35 insofar as some marine water treatment chemicals are chemicals used aboard vessels to prevent corrosion, remove impurities, and enhance the operation of a vessel's operational systems. Defendants deny the remainder of Paragraph 35.

36. Defendants admit the first sentence of Paragraph 36 insofar as water treatment chemicals have distinct uses from other category of products, and that the different types of water treatment chemicals have distinct uses from one another. Defendants deny the remainder of Paragraph 36.

37. Defendants aver that to the extent Paragraph 37 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny Paragraph 37 of the Complaint.

38. Defendants aver that to the extent Paragraph 38 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny Paragraph 38 of the Complaint.

39. Defendants admit Paragraph 39 insofar as fleets of globally trading vessels that call in ports around the world could include tankers, container ships, bulk carriers, cruise ships, and military support vessels, subject to Defendants' request for further definition of the term Global Fleets as used by the FTC in its First Set of Interrogatories, Interrogatory 2.

40. Defendants admit the first sentence of Paragraph 40 insofar as some customers purchase water treatment chemicals and services through RFPs or through direct negotiations, subject to Defendants' request for further definition of the term Global Fleets as used by the FTC in its First Set of Interrogatories, Interrogatory 2. Defendants deny the remainder of Paragraph 40 of the Complaint.

41. Defendants deny Paragraph 41, subject to Defendants' request for further definition of the term Global Fleets as used by the FTC in its First Set of Interrogatories, Interrogatory 2.

42. Defendants admit that the quote in Paragraph 42 was made by a Wilhelmsen employee, but aver that the FTC's selective quotation is misleading as framed. Defendants deny the remainder of Paragraph 42.

43. Defendants aver that to the extent Paragraph 43 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny Paragraph 43 of the Complaint.

B. Purported Relevant Geographic Market

44. Defendants aver that to the extent Paragraph 44 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny Paragraph 44 of the Complaint, subject to Defendants' request for further definition of the term Global Fleets as used by the FTC in its First Set of Interrogatories, Interrogatory 2.

PURPORTED MARKET STRUCTURE AND THE MERGER'S PRESUMPTIVE ILLEGALITY

45. Defendants are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 45. Defendants deny the remainder of Paragraph 45, except to the extent it contains legal conclusions to which no response is necessary.

46. Defendants aver that to the extent Paragraph 46 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny Paragraph 46 of the Complaint.

47. Defendants deny Paragraph 47, except to the extent that they contain legal conclusions to which no response is necessary.

48. Defendants deny Paragraph 48, except to the extent that they contain legal conclusions to which no response is necessary.

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

49. Defendants deny Paragraph 49, except to the extent it contains legal conclusions to which no response is necessary.

50. Defendants deny Paragraph 50.

51. Defendants admit that they offer customers the ability to purchase maritime products in addition to water treatment chemicals, including fuel treatment chemicals, marine cleaning products, and marine gases, among others. Defendants deny the remainder of Paragraph 51.

52. Defendants admit that the quote in Paragraph 52 was made by Drew executive, but aver that the statement is taken out of context. Defendants deny the remainder of Paragraph 52.

53. Defendants deny Paragraph 53.

54. Defendants admit that Wilhelmsen and Drew compete aggressively in a variety of ways with one another and several other competitors. Defendants deny the remainder of Paragraph 54.

55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 55. Defendants deny the remainder of Paragraph 55.

56. Defendants aver that to the extent Paragraph 56 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny Paragraph 56 of the Complaint.

57. Defendants aver that to the extent Paragraph 57 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny Paragraph 57 of the Complaint.

58. Defendants are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 58. Defendants deny the remainder of Paragraph 58.

59. Defendants deny Paragraph 59.

60. Defendants deny Paragraph 60, except to the extent it contains legal conclusions to which no response is necessary.

61. Defendants deny Paragraph 61, except to the extent it contains legal conclusions to which no response is necessary.

PURPORTED LACK OF COUNTERVAILING FACTORS

62. Defendants deny Paragraph 62 of the Complaint, except to the extent it contains legal conclusions to which no response is necessary.

63. Defendants deny Paragraph 63 of the Complaint.

64. Defendants deny Paragraph 64 of the Complaint, except to the extent it contains legal conclusions to which no response is necessary.

65. Defendants deny Paragraph 65 of the Complaint, except to the extent it contains legal conclusions to which no response is necessary.

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

66. Defendants aver that to the extent Paragraph 66 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Defendants deny Paragraph 66 of the Complaint.

67. Defendants deny Paragraph 67 of the Complaint, except to the extent it contains legal conclusions to which no response is necessary.

68. Defendants deny Paragraph 68 of the Complaint, except to the extent it contains legal conclusions to which no response is necessary.

69. Defendants deny Paragraph 69. Defendants aver that Plaintiff is not entitled to any of the relief requested and respectfully requests that Defendants be awarded the costs incurred in defending this action, and any and all other relief as the Court may deem just and proper.

DEFENDANTS' AFFIRMATIVE DEFENSES

Defendants assert the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Plaintiff:

1. The Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. The Complaint fails to allege a plausible relevant product market.
4. The Complaint fails to allege a plausible relevant geographic market.
5. The Complaint fails to allege undue share in any plausibly defined relevant market.
6. The Complaint fails to allege any plausible harm to competition.
7. The Complaint fails to allege any plausible harm to any consumers.
8. The Complaint fails to allege any plausible harm to consumer welfare.

9. New entry and expansion by competitors is easy, and can be timely, likely, and sufficient, such that it will ensure that there will be no harm to competition, consumers, or consumer welfare.
10. The customers at issue in the Complaint have a variety of tools to ensure that they receive competitive pricing and terms.
11. The combination of the Defendants' businesses will be procompetitive. The merger will result in substantial merger-specific efficiencies, cost synergies, and other procompetitive effects that will directly benefit consumers. These benefits will greatly outweigh any and all proffered anticompetitive effects.
12. Defendants reserve the right to assert any other defenses as they become known to Defendants.

Dated: March 9, 2018
Washington, DC

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of March, 2018, I served the foregoing on all counsel of record via the Court's CM/ECF system:

/s/ Corey W. Roush
Corey W. Roush
Counsel for Defendants Wilh. Wilhelmsen Holding ASA and Wilhelmsen Maritime Services AS