

**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

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



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

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

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

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 00

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. dwid(oree Gghic net

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

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.

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

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.

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

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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