

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS
JULY 1, 2018, TO DECEMBER 31, 2018

IN THE MATTER OF

**WILHELM WILHELMSSEN,
WILHELMSSEN MARITIME SERVICES AS,
RESOLUTE FUND II, L.P.,
DREW MARINE INTERMEDIATE II B.V.,
AND
DREW MARINE GROUP, INC.**

COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. 9380; File No. 171 0161
Complaint, February 22, 2018 – Decision, July 31, 2018*

This case addresses the \$400 million acquisition by Wilhelm Wilhelmsen of Drew Marine Technical Solutions. The complaint alleges that the acquisition would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the market for marine water treatment chemicals and services to global fleets. The Order dismissed the Complaint without prejudice, in light of the Respondents' decision to abandon the proposed acquisition, and Respondent Wilhelmsen's withdrawal of its Hart-Scott-Rodino Notification and Report Forms.

Participants

For the Commission: Llewellyn Davis, Amy Dobrzynski, Daniel Freer, Josh Goodman, Frances Anne Johnson, Michael Lovinger and Merrick Pastore.

For the Respondents: Paul Hewitt, Akin Gump; Mark Ryan, Mayer Brown.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents Wilhelm Wilhelmsen and Wilhelmsen Maritime Services AS (collectively "Wilhelmsen") and the Resolute Fund II, L.P., Drew Marine Intermediate II B.V., and Drew Marine Group, Inc. (collectively "Drew") have executed an acquisition agreement in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to

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Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

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

3. Respondents' 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, Respondents are the two leading water treatment suppliers to Global Fleets.

5. Respondents are each other's closest competitor. Respondents 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. Respondents 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. Respondents 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. Respondents 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 Respondents

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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. Respondents 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 Respondents’ similar offerings to pit one Respondent against the other in negotiations to obtain lower prices and better service. Indeed, both Respondents 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, Respondents 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 Respondents. 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

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

I. JURISDICTION

16. Respondents are, and at all relevant times have been, engaged in commerce or in activities 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.

17. The Acquisition constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. RESPONDENTS

18. Wilhelmsen is the largest supplier of water treatment chemicals and services to Global Fleets around the world. Respondent Wilhelmsen Maritime Services AS is a wholly owned subsidiary of Respondent Wilhelm 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.

19. 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. Respondents Drew Marine Intermediate II B.V. and Drew Marine

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Group, Inc. are part of the portfolio of Respondent 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.

III. THE ACQUISITION

20. 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.

IV. MARKET PARTICIPANTS AND INDUSTRY DYNAMICS

21. 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, Respondents sell maritime customers several additional categories of products, including cleaning chemicals, fuel treatment chemicals, welding gases, and refrigerants.

22. 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.

23. 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 Respondents 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.

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

V. RELEVANT MARKET

25. 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”).

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A. Relevant Product Market

26. 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.

27. 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.

28. Marine water treatment chemicals have distinct uses from any other category of product. Respondents analyze their business and market their products for marine water treatment separately from other products. Respondents 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 Respondents 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. Respondents also provide their customers with consistent water treatment chemicals throughout their distribution network.

29. 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 SSNIP.

30. 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.

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

32. 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.

33. Global Fleets have distinct characteristics within the broader universe of maritime vessels, and Respondents 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.

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- 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.

34. Respondents 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".

35. 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

36. 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.

VI. MARKET CONCENTRATION AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

37. 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.

38. 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.

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39. The market for the supply of water treatment chemicals and services to Global Fleets is already highly concentrated, and the Respondents 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.

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

**VII. THE MERGER WOULD ELIMINATE VITAL HEAD-TO-HEAD
COMPETITION BETWEEN RESPONDENTS**

41. Respondents 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.

42. 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.

43. 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.

44. Respondents 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."

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

46. Respondents 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

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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.

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

48. 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. Respondents currently risk losing business to each other if Global Fleet owners and operators perceive one Respondent'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.

49. 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.

50. 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 Respondents' business documents reveal that they also view Marichem as an inferior competitor, with a lower-quality product offering.

51. 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.

52. 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.

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53. 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 Respondents offer their customers. As a result, such firms do not meaningfully compete with Respondents today and would not likely constrain the combined firm's exercise of market power post-Acquisition.

VIII. LACK OF COUNTERVAILING FACTORS

A. Barriers to Entry and Expansion

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

55. 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.

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

B. Efficiencies

57. Respondents 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.

IX. VIOLATION

Count I – Illegal Agreement

58. The allegations of Paragraphs 1 through 57 above are incorporated by reference as though fully set forth herein.

59. The Acquisition Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

Count II—Illegal Acquisition

60. The allegations of Paragraphs 1 through 57 above are incorporated by reference as though fully set forth herein.

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61. The Acquisition, if consummated, may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the twenty-fourth day of July, 2018, at 10 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

Final Order

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Merger challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant market, with the ability to offer such products and services as Wilhelmsen and Drew were offering and planning to offer prior to the Acquisition.
2. A prohibition against any transaction between Wilhelmsen and Drew that combines their businesses in the relevant market, except as may be approved by the Commission.
3. A requirement that, for a period of time, Wilhelmsen and Drew provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant market with any other company operating in the relevant markets.
4. A requirement to file periodic compliance reports with the Commission.
5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore Drew as a viable, independent competitor in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twenty-second day of February, 2018.

By the Commission.

ORDER DISMISSING COMPLAINT

On February 22, 2018, the Commission issued an Administrative Complaint alleging that Respondents Wilhelm Wilhelmsen and Wilhelmsen Maritime Services AS (collectively “Wilhelmsen”) and the Resolute Fund II, L.P., Drew Marine Intermediate II B.V., and Drew Marine Group, Inc. (collectively “Drew”) had executed an acquisition agreement in violation of

Final Order

Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. The Administrative Complaint further alleged that the merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act.

On May 4, 2018, pursuant to Section 13(b) of the FTC Act and Section 16 of the Clayton Act, the Commission filed a complaint in the United States District Court for the District of Columbia seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating the proposed acquisition until final resolution of this administrative proceeding.¹ On July 21, 2018, the District Court issued an Order granting the Commission's request for a preliminary injunction.²

Complaint Counsel and Respondents have now filed a Joint Motion to dismiss the Administrative Complaint, as subsequently amended, on the grounds that the Respondents have terminated their proposed acquisition, and that Wilhelmsen has withdrawn its Hart-Scott-Rodino Notification and Report Forms filed for this proposed acquisition, and has no intent to refile.³

The Commission has determined to dismiss the Complaint without prejudice, in light of the Respondents' decision to abandon the proposed acquisition, and Respondent Wilhelmsen's withdrawal of its Hart-Scott-Rodino Notification and Report Forms. Respondents would not be able to effectuate the proposed acquisition without filing new Hart-Scott-Rodino Notification and Report Forms, and the most important elements of the relief set out in the Notice of Contemplated Relief in the Administrative Complaint therefore have been accomplished without the need for further administrative litigation.⁴

For the foregoing reasons, the Commission has determined that the public interest warrants dismissal of the Administrative Complaint in this matter. The Commission has determined to do so without prejudice, however, because it is not reaching a decision on the merits. Accordingly,

IT IS ORDERED THAT the Complaint in this matter be, and it hereby is, dismissed without prejudice.

By the Commission.

¹ *FTC 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 (D.D.C.), [Amended Complaint For Temporary Restraining Order and Preliminary Injunction Pursuant To Section 13\(b\) of the Federal Trade Commission Act](#) (Filed May 4, 2018).

² See [Statement by FTC Bureau of Competition Acting Deputy Director Haidee L. Schwartz](#) (July 23, 2018).

³ See [Joint Motion To Dismiss Amended Complaint](#) (Filed July 26, 2018).

⁴ See, e.g., *In the Matter of CDK Global, Inc., et al.*, Docket No. 9382, [Order Dismissing Complaint](#) (March 26, 2018); *In the Matter of The J.M. Smucker Company and Conagra Brands, Inc.*, Docket No. 9381, [Order Dismissing Complaint](#) (March 8, 2018); *In the Matter of DraftKings, Inc. and FanDuel Limited*, Docket No. 9375, [Order Dismissing Complaint](#) (July 14, 2017); *In the Matter of Advocate Health Care Network, Advocate Health and Hospitals Corporation, and NorthShore University HealthSystem*, Docket No. 9369, [Order Dismissing Complaint](#) (March 20, 2017).

Complaint

IN THE MATTER OF

CRH PLC

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. C-4653; File No. 171 0230
Complaint, June 12, 2018 – Decision, August 1, 2018

This consent order addresses the \$3.5 billion acquisition by CRH plc of Ash Grove Cement Company. The complaint alleges that the acquisition would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition in certain regional markets in the United States for the manufacture and sale of portland cement, sand and gravel, and crushed limestone. The consent order requires CRH to divest (1) the Trident cement plant and quarry located in Three Forks, Montana to Grupo Cementos de Chihuahua SAB de CV; (2) two sand-and-gravel plants and one sand-and-gravel pit located in Omaha, Nebraska to Martin Marietta Materials, Inc.; and (3) two limestone quarries and a hot-mix asphalt plant located in Olathe, Kansas, as well as an additional limestone quarry and hot-mix asphalt plant located in Louisburg, Kansas, to Summit Materials, Inc.

Participants

For the *Commission*: *Nandu V. Machiraju* and *Elyssa L. Wenzel*.

For the *Respondent*: *John R. Fornaciari* and *Thomas E. Hogan*, *Baker & Hostetler LLP*.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent CRH plc (“CRH”), a company subject to the jurisdiction of the Commission, has agreed to acquire Ash Grove Cement Company (“Ash Grove”), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45; that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent CRH is a public limited company registered in Ireland, with its office and principal place of business located at Stonemason’s Way, Rathfarnham, Dublin 16, D16KH51, Ireland. CRH’s principal U.S. subsidiary, CRH Americas, Inc. (formerly Oldcastle, Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its U.S. headquarters and principal place of business located at 900 Ashwood Parkway, Suite 600, Atlanta, Georgia, 30338.