

PUBLIC

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman  
Terrell McSweeney



In the Matter of:

WILH. WILHELMSSEN HOLDING ASA,  
WILHELMSSEN MARITIME SERVICES AS,  
RESOLUTE FUND II, L.P.,  
DREW MARINE INTERMEDIATE II B.V.,  
and  
DREW MARINE GROUP, INC.

Docket No. 9380

REDACTED PUBLIC VERSION

**RESPONDENTS' ANSWER TO AMENDED COMPLAINT**

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**RESPONDENTS' ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S STATEMENT OF CLAIM**

Respondents 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, "Respondents") hereby answer Plaintiff Federal Trade Commission's ("FTC") Amended Complaint and assert affirmative and other defenses.

Any allegation in the Amended 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.<sup>1</sup> This, along with the efficiencies generated by the merger, will lead to lower prices for customers.

Respondents 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 Respondents will present to the Court, Respondents will realize an [REDACTED] reduction in the combined firm's cost basis, which equals a [REDACTED] reduction

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<sup>1</sup> "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).

in Drew’s cost basis. Wilhelmsen has a proven track record of achieving these types of cost-savings 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 █████ of Drew’s EBITDA, with a best-case scenario of retaining █████ of that █████. 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 █████ per year in the United States. Compl. ¶ 61.

The FTC’s view that the proposed merger is unlawful rests fundamentally on the allegation that Respondents would hold 60% of the alleged market post-merger. Compl. ¶¶ 37-40. From that premise, the Amended Complaint asserts the acquisition is presumptively unlawful because it surpasses a 2,500-point HHI threshold. Compl. ¶ 40; *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 Respondents smacks of gerrymandering. To that end, the Amended Complaint asserts that the proposed transaction will harm competition in the sale of water treatment chemicals and equipment to “Global Fleets.” Although the Amended Complaint is silent as to specific customers comprising “Global Fleets,”<sup>2</sup> Compl. ¶ 3, the FTC is

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<sup>2</sup> Defendants have sought clarification through interrogatories regarding what vessels are in the alleged “Global Fleets” as the Amended 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.

plainly seeking to protect the alleged interests of the world's largest shipping companies in their purchases of a very narrow category of products.

The Amended Complaint then lumps all (or at least more than one type of) the products in that category (water treatment chemicals)<sup>3</sup> 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). Respondents do not in the normal course of business use the Amended Complaint's construct of Global Fleets; rather, Respondents 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

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<sup>3</sup> Here again the Amended 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.

Wilhelmsen or Drew customers, Respondents collectively serve only ██████ of the vessels over 1,000 g.t.<sup>4</sup> Those figures leave the FTC well short of a presumption of illegality.

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 Amended Complaint acknowledges that there are current competitors who provide “marine water treatment chemicals and services *to Global Fleets*” *id.* ¶ 26 (emphasis added), but incorrectly dismisses them as “[r]egional and local suppliers” with “limited service capabilities.” Compl. ¶ 12.

These competitors cannot be so easily dismissed. Detailed economic analyses that the Respondents 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 Amended Complaint’s assertions that “Global Fleet owners and operators are often unwilling to use these suppliers” and that these suppliers are “untested.” *Id.* ¶ 51.

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<sup>4</sup> The ██████ 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.

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 Amended Complaint.<sup>5</sup>

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

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<sup>5</sup> 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 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 BLUTECH 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").

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 Respondents were no longer competitive on price, customers would look increasingly to the competitors that already serve 40% of the claimed marketplace and over █████ of the vessels 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 Respondents 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.

¶ 33. Consistent with this expectation, since the announcement of the proposed merger, some of Respondents’ 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.<sup>6</sup> 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

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<sup>6</sup> 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](http://www.chevronmarineproducts.com/en_UK/products/xli-water-treatments.html) (providing overview of products).



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 ‘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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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 Amended 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 Amended Complaint may in fact prefer to use, *see* Compl. ¶ 33) 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.

## I. NATURE OF THE CASE

1. Respondents admit Paragraph 1 of the Amended 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. Respondents deny the remainder of Paragraph 1.

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

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

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

5. Respondents 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. Respondents deny the remainder of Paragraph 5.

6. Respondents deny Paragraph 6 of the Amended Complaint.

7. Respondents 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. Respondents deny the remainder of Paragraph 7, except to the extent it contains legal conclusions to which no response is necessary.

8. Respondents admit Paragraph 8 of the Amended 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. Respondents deny the remainder of Paragraph 8.

9. Respondents deny Paragraph 9.

10. Respondents deny Paragraph 10.

11. Respondents 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.

Respondents 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. Respondents 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. Respondents deny the remainder of Paragraph 11.

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

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

14. Respondents 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. Respondents deny the remainder of Paragraph 14, except to the extent that they contain legal conclusions to which no response is necessary.

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

## **II. JURISDICTION AND VENUE**

16. Respondents aver that to the extent Paragraph 16 of the Amended Complaint states legal conclusions, no response is required. To the extent a response is required, Respondents admit Paragraph 16 of the Amended Complaint.

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

### III. RESPONDENTS

18. Respondents are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 18. Respondents 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.” Respondents deny the remainder of Paragraph 18 of the Amended Complaint.

19. Respondents are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 19. Respondents 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.” Respondents deny the remainder of Paragraph 19 of the Amended Complaint.

### IV. THE ACQUISITION

20. Respondents admit Paragraph 20 of the Amended Complaint.

### V. MARKET PARTICIPANTS AND INDUSTRY DYNAMICS

21. Respondents are without knowledge or information sufficient to respond to the first sentence of Paragraph 21. Respondents admit the second sentence of Paragraph 21.

22. Respondents are without knowledge or information sufficient to respond to the allegations in Paragraph 22.

23. Respondents deny the characterization in Paragraph 23 of water treatment chemicals and services other than Respondents and Marichem as “fringe market participants.” Respondents are without knowledge or information sufficient to respond to the remainder of Paragraph 23.

24. Respondents deny Paragraph 24.

## VI. RELEVANT MARKET

25. Respondents aver that to the extent Paragraph 25 of the Amended Complaint states legal conclusions, no response is required. To the extent a response is required, Respondents deny Paragraph 25 of the Amended Complaint.

### A. Purported Relevant Product Market

26. Respondents deny Paragraph 26 of the Amended Complaint, except to the extent that Paragraph 26 of the Amended Complaint states legal conclusions to which no response is required.

27. Respondents admit Paragraph 27 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. Respondents deny the remainder of Paragraph 27.

28. Respondents admit the first sentence of Paragraph 28 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. Respondents deny the remainder of Paragraph 28.

29. Respondents aver that to the extent Paragraph 29 of the Amended Complaint states legal conclusions, no response is required. To the extent a response is required, Respondents deny Paragraph 29 of the Amended Complaint.

30. Respondents aver that to the extent Paragraph 30 of the Amended Complaint states legal conclusions, no response is required. To the extent a response is required, Respondents deny Paragraph 30 of the Amended Complaint.

31. Respondents admit Paragraph 31 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 Respondents' request for further definition of the term Global Fleets as used by the FTC in the First Set of Interrogatories, Interrogatory 2, in the related case in District Court in the District of Columbia.

32. Respondents admit the first sentence of Paragraph 32 insofar as some customers purchase water treatment chemicals and services through RFPs or through direct negotiations, subject to Respondents' request for further definition of the term Global Fleets as used by the FTC in its First Set of Interrogatories, Interrogatory 2 in the related case in District Court in the District of Columbia. Respondents deny the remainder of Paragraph 32 of the Amended Complaint.

33. Respondents deny Paragraph 33, subject to Respondents' request for further definition of the term Global Fleets as used by the FTC in its First Set of Interrogatories, Interrogatory 2, in the related case in District Court in the District of Columbia.

34. Respondents admit that the quote in Paragraph 34 was made by a Wilhelmsen employee, but aver that the FTC's selective quotation is misleading as framed. Respondents deny the remainder of Paragraph 34.

35. Respondents aver that to the extent Paragraph 35 of the Amended Complaint states legal conclusions, no response is required. To the extent a response is required, Respondents deny Paragraph 35 of the Amended Complaint.

**B. Purported Relevant Geographic Market**

36. Respondents aver that to the extent Paragraph 36 of the Amended Complaint states legal conclusions, no response is required. To the extent a response is required, Respondents deny Paragraph 36 of the Amended Complaint, subject to Respondents' request for further definition of the term Global Fleets as used by the FTC in its First Set of Interrogatories, Interrogatory 2 in the related case in District Court in the District of Columbia.

**VII. PURPORTED MARKET CONCENTRATION AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY**

37. Respondents are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 37. Respondents deny the remainder of Paragraph 37, except to the extent it contains legal conclusions to which no response is necessary.

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

39. Respondents deny Paragraph 39, except to the extent that they contain legal conclusions to which no response is necessary.

40. Respondents deny Paragraph 40, except to the extent that they contain legal conclusions to which no response is necessary.

**VIII. THE MERGER WOULD PURPORTEDLY ELIMINATE VITAL HEAD-TO-HEAD COMPETITION BETWEEN WILHELMSSEN AND DREW**

41. Respondents deny Paragraph 41, except to the extent it contains legal conclusions to which no response is necessary.

42. Respondents deny Paragraph 42.

43. Respondents 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. Respondents deny the remainder of Paragraph 43.

44. Respondents admit that the quote in Paragraph 44 was made by Drew executive, but aver that the statement is taken out of context. Respondents deny the remainder of Paragraph 44.

45. Respondents deny Paragraph 45.



46. Respondents admit that Wilhelmssen and Drew compete aggressively in a variety of ways with one another and several other competitors. Respondents deny the remainder of Paragraph 46.

47. Respondents are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 47. Respondents deny the remainder of Paragraph 47.

48. Respondents aver that to the extent Paragraph 48 of the Amended Complaint states legal conclusions, no response is required. To the extent a response is required, Respondents deny Paragraph 48 of the Amended Complaint.

49. Respondents aver that to the extent Paragraph 49 of the Amended Complaint states legal conclusions, no response is required. To the extent a response is required, Respondents deny Paragraph 49 of the Amended Complaint.

50. Respondents are without knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 50. Respondents deny the remainder of Paragraph 50.

51. Respondents deny Paragraph 51.

52. Respondents deny Paragraph 52, except to the extent it contains legal conclusions to which no response is necessary.

53. Respondents deny Paragraph 53, except to the extent it contains legal conclusions to which no response is necessary.

## **IX. PURPORTED LACK OF COUNTERVAILING FACTORS**

### **A. Barriers to Entry and Expansion**

54. Respondents deny Paragraph 54 of the Amended Complaint, except to the extent it contains legal conclusions to which no response is necessary.

55. Respondents deny Paragraph 55 of the Amended Complaint.

56. Respondents deny Paragraph 56 of the Amended Complaint, except to the extent it contains legal conclusions to which no response is necessary.

**B. Efficiencies**

57. Respondents deny Paragraph 57 of the Amended Complaint, except to the extent it contains legal conclusions to which no response is necessary.

**X. PURPORTED VIOLATION**

**Count I – Illegal Agreement**

58. Respondents aver that no response is required to the allegations in Paragraph 58.

59. Respondents deny Paragraph 59, except to the extent that it contains legal conclusions to which no response is necessary.

**Count II – Illegal Acquisition**

60. Respondents aver that no response is required to the allegations in Paragraph 60.

61. Respondents deny Paragraph 61 of the Amended Complaint, except to the extent it contains legal conclusions to which no response is necessary.

**RESPONDENTS' AFFIRMATIVE DEFENSES**

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

1. The Amended 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 Amended Complaint fails to allege a plausible relevant product market.
4. The Amended Complaint fails to allege a plausible relevant geographic market.
5. The Amended Complaint fails to allege undue share in any plausibly defined relevant market.

6. The Amended Complaint fails to allege any plausible harm to competition.
7. The Amended Complaint fails to allege any plausible harm to any consumers.
8. The Amended 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 Amended Complaint have a variety of tools to ensure that they receive competitive pricing and terms.
11. The combination of the Respondents' 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. Respondents reserve the right to assert any other defenses as they become known to Respondents.

**NOTICE OF CONTEMPLATED RELIEF**

WHEREFORE, Respondents requests that the Commission enter judgment in its favor as follows:

- A. The Amended Complaint be dismissed with prejudice;
- B. None of the Amended Complaint's contemplated relief issues to the FTC;
- C. Costs incurred in defending this action be awarded to Defendants; and
- D. Any and all other relief as the Commission may deem just and proper.

[SIGNATURE BLOCK NEXT PAGE]

Dated: March 16, 2018  
Washington, DC

Respectfully submitted,

/s/ Corey W. Roush

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**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

March 16, 2018

By: /s/ Corey W. Roush

Notice of Electronic Service

**I hereby certify that on March 19, 2018, I filed an electronic copy of the foregoing Respondents' Answer to the Amended Complaint - Public Version, with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

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**I hereby certify that on March 19, 2018, I served via E-Service an electronic copy of the foregoing Respondents' Answer to the Amended Complaint - Public Version, upon:**

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