Section 57 of the Competition Act 2004

Grounds of Decision issued by the Competition and Consumer Commission of Singapore

In relation to the notification for decision on the proposed acquisition by Sembcorp Marine Limited of Keppel Offshore & Marine Limited

Date: 2 November 2022

Case number: 400-140-2022-004

Confidential information in the original version of this Decision will be redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [✂].

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I. Introduction

1. On 29 July 2022, the Competition and Consumer Commission of Singapore ("CCCS") accepted a joint notification from Sembcorp Marine Limited ("SCM") and Keppel Offshore & Marine Limited ("KOM") (collectively, the "Parties") for a decision under section 57 of the Competition Act 2004 (the "Act") as to whether the proposed combination of SCM and KOM will infringe section 54 of the Act, if carried into effect.[1] On 27 October 2022, SCM announced that it had entered into an Amended and Restated Combination Framework Agreement ("Framework Agreement") with Keppel Corporation Limited ("KCL") which sets out the revised transaction structure and terms on which SCM will directly acquire 100 per cent. of the issued and paid-up ordinary shares in the share capital of KOM from KCL (the "Proposed Acquisition").

2. The Proposed Acquisition involves shipbuilding and ship repair services. In reviewing the Proposed Acquisition, CCCS conducted a public consultation from 2 August 2022 to 15 August 2022 and contacted more than 90 stakeholders, including competitors and customers. CCCS received feedback from more than 20 stakeholders. Two (2) competitors and seven (7) customers raised concerns such as the increase in prices of commercial vessels and ship repair services; and the reduction in alternative suppliers in Singapore post-merger. One (1) other competitor and six (6) other customers indicated that they had no concerns with the Proposed Acquisition. CCCS also engaged relevant government agencies to gather information necessary for CCCS's assessment of the Proposed Acquisition.

3. At the end of the consultation process and after evaluating all the information obtained by CCCS including the Parties' submissions and feedback from third parties, CCCS concludes that the Proposed Acquisition, if carried into effect, will not infringe section 54 of the Act.

II. The Parties

SCM

4. SCM is incorporated in Singapore and publicly listed on the Mainboard of the Singapore Exchange Securities Trading Limited ("SGX-ST"). SCM offers one-stop engineering solutions for the offshore, marine and energy industries, with an increasing focus on cleaner offshore and marine, renewable and clean energy solutions. Besides Singapore, SCM also operates shipyards and facilities such as engineering offices in Brazil, France, Indonesia, Malaysia, Norway, Poland, the United Kingdom and the United States. SCM focuses on four key capabilities: rigs and floaters; repairs and upgrades; offshore platforms; and specialised shipbuilding.

[1] The notification of the proposed combination was sent to CCCS on 24 June 2022.

KOM

5. KOM is incorporated in Singapore and wholly owned by KCL, which is listed on the Mainboard of the SGX-ST. KOM provides total solutions to the offshore, marine and energy industry through its global network of shipyards and offices. KOM has a wide range of capabilities such as design and engineering, new builds, conversions and repairs, and support services. Besides Singapore, KOM also operates shipyards and facilities in Brazil, China, Japan, the Philippines, and the United States.

6. The Parties provide shipbuilding (including commercial vessel conversions) and ship repair services at their Singapore shipyards.

III. The Proposed Acquisition

7. The Proposed Acquisition relates to the acquisition by SCM of 100 percent of the issued and paid-up ordinary shares in the share capital of KOM from KCL.[2] Following the Proposed Acquisition, KOM will become a wholly-owned subsidiary of SCM.

8. CCCS considers that the Proposed Acquisition constitutes a merger pursuant to section 54(2)(*b*) of the Act, as SCM will acquire the entire share capital and voting rights in KOM, and consequently direct control of it.

IV. Competition Issues

9. The Proposed Acquisition concerns shipbuilding and ship repair services.

Shipbuilding

10. The Parties' shipbuilding activities are primarily targeted at the offshore, marine and energy industries.[3] The Parties sell a range of offshore exploration, production and support vessels globally. Broadly, these vessels are used to explore and identify new oil and gas reserves under the seabed; extract and produce oil and gas from those reserves; and provide complementary support such as enabling workers to be based near oil and gas fields in the case of offshore accommodation vessels. For the purposes of the present assessment, CCCS will refer to all seagoing or commercial vessels as "Commercial Vessels".[4]

11. The Parties' shipbuilding activities come either in the form of newbuilds or conversion projects. "Conversion" refers to the process of converting a vessel from one type to

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[2] As a condition precedent to the Proposed Acquisition, KOM will undergo internal restructuring, which involves amongst others, the divestment of KOM's legacy rigs and associated receivables, Floatel International Ltd and Dyna-Mac Holdings Ltd.
[3] Paragraph 14.1 of Form M1.
[4] Paragraph 14.8 of Form M1.

another type and involves extensive design engineering and reconfigurations of a vessel. Conversion is typically used to extend the life of and repurpose an existing vessel.[5]

Ship repair services

12. The Parties also provide ship repair services for Commercial Vessels. Most ship repair works revolve around the inspection of hull integrity, damage and paint repair, high pressure washing, replacement of old and corroded parts, ballast tank cleaning / coating and pipe renewals, steering gear works, etc. Similar ship repair works are involved in ship upgrading, which refers to the process of improving the performance or function of an existing Commercial Vessel.[6] Ship repairs and upgrades are generally of significantly lower complexity and require less time than the construction of newbuilds or conversions.[7] For the purposes of the present assessment, CCCS will refer to ship repair services as including upgrading works.

13. Ship repair works may either be scheduled (i.e. pre-planned for periodic servicing) or unscheduled when emergencies or collisions arise.[8] The Parties provide ship repair services primarily at their yards in Singapore.

Overlapping goods/services in Singapore

14. The Parties submitted that they overlap in Singapore in:

    a. the supply of Commercial Vessels; and
    b. the provision of ship repair services.[9]

15. In assessing the Proposed Acquisition, given that the Parties are existing competitors, CCCS focused on the horizontal effects, specifically whether the Proposed Acquisition will lead to non-coordinated effects and coordinated effects, as well as vertical effects that would result in a substantial lessening of competition ("SLC") in Singapore.

16. In addition, arising from third party feedback, the CCCS also assessed whether post-merger, the merged entity may have the ability and incentive to exert its combined purchasing power to foreclose competition by:

    a. profitably depressing prices paid to (i) suppliers for general subcontractor services for shipbuilding; and (ii) original equipment manufacturers or third parties for different specialised parts, specialised engineering services and specialised equipment required for certain ship repair services ("specialised inputs") ((i) and

[5] Paragraph 13.1.1 of the Parties' response dated 9 September 2022 to CCCS's 15 August 2022 RFI.
[6] Paragraphs 13.1.1 and 13.1.2 of the Parties' response dated 9 September 2022 to CCCS's 15 August 2022 RFI.
[7] Paragraph 18.12 of Form M1; paragraph 13.1.2 of the Parties' response dated 9 September 2022 to CCCS's 15 August 2022 RFI.
[8] Paragraph 19.3 of Form M1.
[9] Paragraph 15.1 of Form M1.

(ii) collectively, “inputs”) below the competitive level for a significant period of time such that the supply of inputs in the market is reduced (“depressing prices of inputs below competitive level”);

b. exerting pressure on its suppliers of specialised inputs to limit or impede their ability to work with the merged entity’s competitors, or inducing its suppliers to provide preferential treatment to the merged entity (e.g. terms of access to the specialised inputs, priority in allocation) (“foreclosure of competitors’ access to specialised inputs”).

17. Arising from third party feedback, CCCS also assessed whether post-merger, the merged entity may have the ability and incentive to foreclose competition for the supply of an adjacent or complementary service.

V. Counterfactual

18. CCCS considers that absent the Proposed Acquisition, the relevant counterfactual would be the status quo (i.e. the Parties would continue to operate separately and independently of each other). There was no evidence to suggest that the market structure or competitive dynamics in the counterfactual would differ from the status quo.

VI. Supply of Commercial Vessels

(a) Relevant Market

19. From the demand-side perspective, third party feedback generally corroborated the Parties’ submissions that different types of Commercial Vessels perform different functions. Customers also order different types and sizes of Commercial Vessels to suit their specific needs.

20. From the supply-side perspective, third party feedback generally corroborated the Parties’ submissions that the major materials and equipment required are common across all types and sizes of Commercial Vessels. Further, different Commercial Vessels can be built in the same dry dock with minor modifications, turnaround time and switching costs between different types of Commercial Vessels. Additionally, third party feedback noted that subcontracting addresses the concerns that some shipbuilders may face in gaining access to specialised manpower (e.g. welding work in relation to LNG carrier projects) and production facilities (e.g. construction lines fitted with LNG tanks) which they may not have on-hand for the construction of specialised Commercial Vessels such as LNG vessels[10]. Subcontracting gives shipbuilders the ability to shift into constructing different

[10] CCCS notes that there is no standard industry definition of “LNG vessels”. The Parties submitted that “LNG vessels” refer to commercial vessels connected with the production, storage and transportation of LNG, which would be LNG carriers, LNG bunkering vessels, floating LNGs, floating storage units and floating storage and

types of Commercial Vessels in response to any changes in market demand. Intellectual property rights over design and engineering capabilities are similarly unlikely to significantly limit supply-side substitution.

21. Therefore, while demand-side substitution is limited, CCCS is of the view that there is some extent of supply-side substitution for different types of Commercial Vessels.

22. In relation to the geographical market, competitors indicated that they compete with other shipbuilders globally and there are no constraints in supplying Commercial Vessels on a global basis. The location of customers is also not a relevant consideration for supplying Commercial Vessels or determining the prices or other terms of the supply. Feedback from customers confirmed that they procure Commercial Vessels on a global basis and do not face any major constraints in doing so.

23. Based on the information submitted by the Parties and the third party feedback received, CCCS did not identify competition concerns with any specific subset of Commercial Vessel types and conversions. Thus, CCCS considers that it is not necessary to conclude on a precise market definition for the supply of Commercial Vessels. For the purpose of assessing the Proposed Acquisition, CCCS considers the relevant market as the global supply of Commercial Vessels ("Commercial Vessels Market").

(b) Market Structure

24. As set out in the *CCCS Guidelines on the Substantive Assessment of Mergers*, competition concerns are unlikely to arise in a merger situation unless the merged entity will have a market share of 40% or more, or the merged entity will have a market share of between 20% and 40% and with a post-merger CR3[11] at 70% or more.[12]

25. The Parties submitted that their global market share in the Commercial Vessels Market is [✂0-10]% [✂] for the period of 2017 to 2021[13]. This does not cross CCCS's indicative thresholds and suggests that the increase in market share arising from the Proposed Acquisition will be small. According to the 2022 BRS Annual Report on "Shipping and Shipbuilding Markets" ("2022 BRS Report"), it was estimated that Chinese, Korean and Japanese shipbuilders accounted for more than 95% of the global orders by deadweight in 2021, with Chinese shipbuilders accounting for almost half of the global orders.[14]

(c) Barriers to Entry and Expansion

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regassification units: paragraph 1.1 of the Parties' response dated 9 October 2022 to CCCS's RFI dated 15 September 2022. Given that the third party feedback received frequently utilised the term "LNG vessels", without further specifying vessel types, CCCS will use the term "LNG vessels" in this Decision where necessary.

[11] "CR3" refers to the combined market share of the three largest firms.

[12] Paragraph 5.15 of the *CCCS Guidelines on the Substantive Assessment of Mergers*.

[13] The number of orders and deliveries for the Parties [✂] because the order or delivery year in relation to the same customer may not fall within 2017 to 2021 [✂].

[14] Page 17 of the 2022 BRS Report.

26. Based on the Parties' submission and third party feedback, CCCS is of the view that the barriers to entry for new entrants into the Commercial Vessels Market is high. This is in view of the substantial resources and investments into capital, land, labour, technology and knowledge required. A supplier's track record is also a material consideration, reflecting the significant time needed for shipbuilders to gain the necessary experience.[15] However, the high barriers to entry can be mitigated by strong support and promotion of the industry at a state level, as has been in done in countries such as China.[16]

27. CCCS is of the view that the barriers to expansion is moderate as the necessary inputs such as production facilities, manpower, main materials and equipment are generally common and transferrable across different vessel types.[17] For more sophisticated Commercial Vessels such as LNG carriers, subcontracting appears to be a common and accepted industry practice and may be relied on to mitigate against a shipbuilder's lack of experience or expertise in a particular area.[18] The ability of shipbuilders to expand and build different Commercial Vessel types is subject to and limited by the physical capacity of their shipyards, which will take time and financial resources to expand.

(d) Countervailing Buyer Power

28. CCCS notes that the top five customers collectively accounted for [✂] and [✂] of SCM's and KOM's worldwide turnover for Commercial Vessels respectively, between 2017 to 2021. Specifically, the largest customer of SCM and KOM accounted for [✂] and [✂] of their respective worldwide turnover for Commercial Vessels.[19] Third party feedback indicated that it is generally not feasible for customers to self-supply or sponsor new entrants due to the amount of time and effort required.

29. On balance, CCCS is of the view that [✂] largest customers may possess some degree of countervailing buyer power as compared to [✂] largest customers, particularly during periods when shipbuilders have excess capacity. [✂] smaller customers are unlikely to possess countervailing buyer power.

(e) Non-coordinated effects

[15] Paragraph 26.1 of Form M1.
[16] Paragraphs 26.1.1 to 26.1.3 of Form M1.
[17] Paragraph 26.2 of Form M1.
[18] Paragraph 1.8.11 of the Parties' response dated 25 July 2022 to CCCS's RFI dated 30 June 2022.
[19] Annexes 9 and 10 of Form M1.

30. Third party feedback indicated the presence of many strong competitors globally that compete with the Parties for the supply of Commercial Vessels, such as shipbuilders in China, South Korea, Japan and the Middle East.

31. However, third party feedback indicated that the Parties are close competitors in the (a) supply of newbuild LNG bunkering vessels; (b) supply of converted floating production, storage and offloading vessels ("FPSOs"); and (c) supply of converted floating storage and regasification units ("FSRUs").

32. Notwithstanding the limitations[20] of the bid data submitted by the Parties, general observation of the bid data and third party feedback indicated that there is a sufficient number of competitors remaining even for specific types of Commercial Vessels such as newbuild LNG bunkering vessels, converted FPSOs and converted FSRUs. As such, CCCS is of the view that strong competition from global competitors will restrain the ability of the merged entity to increase prices after the Proposed Acquisition. Furthermore, third party feedback indicated that customers are able to easily switch to alternative shipbuilders.

33. On balance, CCCS is of the view that the Proposed Acquisition is unlikely to give rise to non-coordinated effects that would result in a SLC in the Commercial Vessels Market, or narrower segments of the market highlighted by third parties.

(f) Coordinated effects

34. Third party feedback highlighted the presence of a large number of global competitors for the supply of Commercial Vessels and that direct and private negotiations take place between customers and suppliers for the procurement of Commercial Vessels. Most third parties did not have a view or did not consider that the Proposed Acquisition will have any impact on the ability of suppliers to coordinate their actions.

35. Based on the information received, CCCS assesses that the Proposed Acquisition will not give rise to coordinated effects that would lead to a SLC in the Commercial Vessels Market.

(g) Vertical effects

36. The Parties submitted that there is no existing vertical relationship between SCM and KOM as KOM does not supply or procure any products or services from SCM and vice versa.[21]

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[20] The confidential nature of tenders meant that the separate bid data submitted by SCM and KOM did not capture the complete list of competitors which participated in the respective tenders.
[21] Paragraph 36.1 of Form M1.

37. Based on the information received from the Parties and third parties, CCCS assesses that the Proposed Acquisition is unlikely to give rise to vertical effects in Singapore with respect to the Commercial Vessels Market.

(h) Conglomerate effects

38. Third party feedback indicated that Commercial Vessels are procured separately from ship repair services. There was no evidence to suggest that the merged entity would engage in bundling or tying practices, save for concerns relating to potential tying or bundling of adjacent or complementary services which will be addressed in paragraph 64 below. Based on the information received from the Parties and third parties, CCCS assesses that the Proposed Acquisition is unlikely to give rise to conglomerate effects in Singapore.

(i) Conclusion on competition assessment with respect to the Commercial Vessels Market

39. Based on the above considerations, CCCS concludes that the Proposed Acquisition if carried into effect, will not result in a SLC in Singapore with respect to the Commercial Vessels Market.

VII. Supply of Ship Repair Services

(a) Relevant Market

40. Third party feedback corroborated the Parties' submissions that a majority of ship repair services are similar across different Commercial Vessel types. Third party feedback also indicated that the resources used in repairing Commercial Vessels are common between different vessel types. Additionally, shipyards are able to engage original equipment manufacturers or subcontractors where specialised inputs are required for specialised vessels such as LNG vessels. Hence, subcontracting gives shipyards the ability to repair different types of Commercial Vessels regardless of their experience.

41. In summary, while demand-side substitution is likely to be limited for ship repair services, CCCS is of the view that there is likely to be some extent of supply-side substitution for the repair of different types of Commercial Vessels.

42. In relation to the geographical market, third parties indicated that shipyards compete on a regional basis, based on the trade routes plied by the Commercial Vessels. Market feedback indicated that a large proportion of ship repair services procured by customers are scheduled, as opposed to unscheduled. Customers expressed strong preference for shipyards that are located along the trading routes of their Commercial Vessels, including loading and discharging ports, to minimise any deviation required from the planned trading routes. Deviations are undesirable as they result in off-hire (i.e. delay resulting in

vessel owners not being able to charge for usage of the vessel) as well as additional fuel consumption. In relation to unscheduled ship repair services, feedback from some customers indicates that they are not geographically constrained to the shipyard located closest to the accident or emergency as they would still consider requesting for quotations from multiple shipyards in the region. Hence, CCCS disagrees with the Parties' submission that shipyards provide ship repair services to Commercial Vessels on a global basis.

43. Based on the information submitted by the Parties and the third party feedback received, CCCS did not identify competition concerns with any specific subset of ship repair services (e.g. types of ship repairs or repairs for different types or classes of vessels). Thus, CCCS considers that it is not necessary to conclude on a precise market definition for the supply of ship repair services. For the purpose of assessing the Proposed Acquisition, CCCS considers the relevant market as the regional supply of ship repair services, based on trade routes ("Ship Repair Market").

(b) Market Structure

44. As there are many trade routes involving Singapore and insufficient data on the exact trade routes and the market shares of competitors along these trade routes, CCCS has instead considered the range of feasible competitors along common trade routes as an indication of the market structure. The Parties have identified shipyards such as those in Middle East, China, Malaysia, South Korea and Japan, as competing with the Parties along the common trade routes. Many of these shipyards along the trade routes were also identified by customers as viable alternatives to the Parties.

45. Using the global market share figures provided by the Parties as a proxy of the regional market shares on selected common trade routes, CCCS observes that Chinese shipyards collectively account for a significant market share (i.e. more than [✂30-40]% compared to [✂0-10]% of the Parties). Second, there are several shipyards in the region, such as CSSC in China, that have shipyards of comparable, if not larger size. Third, by volume of ship repair services, regions such as Japan, Indonesia, South Korea and United Arab Emirates have similar market shares as the Parties. This suggests that the Parties will continue to be subjected to considerable competition in the Ship Repair Market post-merger.

(c) Barriers to Entry and Expansion

46. Based on the Parties' submission and third party feedback, CCCS is of the view that the barriers to entry are high, while barriers to expansion are moderate, similar to the analysis in respect of the Commercial Vessels Market at paragraphs 26 and 27 above. However, barriers to entry and expansion in the Ship Repair Market are overall lower given that the

expertise required can be more readily acquired and it is easier for shipbuilders with existing infrastructure and facilities to enter the market.[22]

(d) Countervailing Buyer Power

47. CCCS notes that the top five customers collectively accounted for [✂] and [✂] of SCM's and KOM's local turnover[23] for ship repair services respectively in 2021. Specifically, the largest customer of SCM and KOM accounted for [✂] and [✂] of their respective Singapore turnover for ship repair services.[24] Third party feedback indicated that it is generally not feasible for customers to self-supply or sponsor new entrants unless customers had the financial capabilities required.

48. On balance, CCCS is of the view that the Parties' largest customers may possess some degree of countervailing buyer power, while the smaller customers are unlikely to possess countervailing buyer power.

(e) Non-coordinated effects

49. General market feedback indicated that the Parties are each other's closest competitors for ship repair services. This is due to the Parties' proximity in location and having similar characteristics in terms of size, services offered and access to the necessary resources for ship repair services.

50. Further, third party feedback noted that the Parties compete closely in the supply of ship repair services for LNG vessels and Very Large Crude Carriers ("**VLCCs**") and there are less alternative shipyards that have facilities to repair LNG vessels and that can accommodate the size of VLCCs.

51. Notwithstanding the limitations of the bid data as explained in paragraph 32 above, the tender data shows that there are other competitors that compete with the Parties for the supply of ship repair services, including the repair of LNG vessels and VLCCs. Thus, CCCS is of the view that competition is likely to remain strong even for specific types of ship repair services such as those involving LNG vessels and VLCCs.

52. Moreover, customers, including those which procure ship repair services for LNG vessels and VLCCs, indicated that they are able to easily switch to alternative shipyards located along the trading routes of the vessels (e.g. in China, Indonesia and Middle East), notwithstanding their preference for the Parties due to their favourable location and access to an ecosystem of specialist subcontractors based in Singapore. Customers also

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[22] Paragraph 3.1 of the Parties' response dated 13 October 2022 to CCCS's RFI dated 11 October 2022.
[23] CCCS relied on the Parties' local turnover as a proxy as there is a lack of turnover data for the regional supply of ship repair services based on trade routes.
[24] Annexes 9 and 10 of Form M1.

indicated that their ability to switch to alternative shipyards located along the trading routes of the vessels would not be affected by the Proposed Acquisition.

53. In addition, while there was a concern that the merged entity may increase prices for its ship repair services following the Proposed Acquisition, third party feedback indicated that the vessel trading routes could be altered to accommodate alternative shipyards. Further, some customers already procure ship repair services from multiple shipyards for cost efficiency.

54. On balance, CCCS is of the view that the Proposed Acquisition is unlikely to give rise to non-coordinated effects that would result in a SLC in the Ship Repair Market, or narrower segments of ship repair services (e.g. repair of LNG vessels and VLCCs).

(f) Coordinated effects

55. The Parties submitted that the Proposed Acquisition will not give rise to any coordinated effects in the provision of ship repair services. Customers consider trade routes when choosing the shipyard for repair services and invite as many shipyards as possible to tender for repairs, even for emergency repairs. It is difficult for shipbuilders to agree tacitly with other competitors in the market on prices as such negotiations are bilateral. Most third parties did not express concern that the Proposed Acquisition will have an impact on the ability of shipyards to coordinate their actions with respect to the supply of ship repair services.

56. Based on the information received, CCCS assesses that the Proposed Acquisition will not give rise to coordinated effects in Singapore with respect to the Ship Repair Market.

(g) Vertical effects

57. For the reasons set out in paragraphs 36 and 37, CCCS assesses that the Proposed Acquisition is unlikely to give rise to vertical effects in Singapore with respect to the Ship Repair Market.

(h) Conglomerate effects

58. For the reasons mentioned in paragraph 38 above, CCCS assesses that the Proposed Acquisition is unlikely to give rise to conglomerate effects in Singapore.

(i) Conclusion on competition assessment with respect to the Ship Repair Market

59. Based on the above considerations, CCCS concludes that the Proposed Acquisition, if carried into effect, will not result in a SLC in Singapore with respect to the Ship Repair Market.

VIII. Other Theories of Harm Raised

(a) Depressing prices of inputs below the competitive level

60. CCCS considers that there is insufficient evidence to conclude that the Proposed Acquisition will enable the merged entity to depress prices of inputs, be it from general or specialised subcontractors, below the competitive level such that the overall supply of inputs in the market is reduced.

61. The practice of negotiating for the best prices and terms is a natural feature of an efficient, competitive and well-functioning market. The Parties' submission that subcontractors (particularly specialised subcontractors) have access to a diverse customer base, including foreign shipyards as well as vessel owners, and retain some degree of bargaining power is generally corroborated by market feedback. In view of the Parties' market shares in the global supply of Commercial Vessels and regional supply of ship repair services (based on trade routes), CCCS is of the view that the Parties are unlikely to enjoy such degree of bargaining power vis-à-vis the specialised subcontractors. While subcontractors offering basic and undifferentiated services may face greater pressure in respect of pricing and contract terms from the merged entity, they may overcome this by diversifying their customer base, offering more specialised services or supplying overseas. Low entry barriers for basic subcontracting services would also allow new entry should there be a greater demand for such services.

(b) Foreclosure of competitors' access to specialised inputs

62. CCCS assesses that there is insufficient evidence to conclude that the Proposed Acquisition will enable the Parties to foreclose competitors' access to specialised inputs. The Parties' submission that the local shipyards are not confined to local suppliers in sourcing for specialised inputs is corroborated by market feedback. The suppliers for specialised inputs also have a diverse customer base, including larger competing shipyards overseas which would require the same specialised inputs and vessel owners which have existing master service agreements to directly procure specialised inputs for use by their selected shipyards. The use of long-term agreements by shipyards does not seem to be prevalent, which suggests that it is likely difficult for the merged entity to execute some form of foreclosure strategy.

63. Notwithstanding the above, should the merged entity be subsequently found to be dominant and have abused its dominance in any input markets to foreclose competition, CCCS could take enforcement action under the section 47 of the Act, which prohibits an abuse of a dominant position.

(c) Foreclosure of an adjacent or complementary service

64. CCCS assesses that the Proposed Acquisition will not give rise to any conglomerate effects that may lead to a foreclosure of the market for the provision of an adjacent or complementary service. Shipyards currently do not bundle or tie ship repair services with the adjacent or complementary service. Further, it will be difficult for the merged entity to successfully foreclose the market for adjacent or complementary services as it is unlikely to have the ability to engage in the tying or bundling in the first place.

IX. Efficiencies

65. Given that the Proposed Acquisition is unlikely to lead to a SLC, it is not necessary for CCCS to make an assessment on the claimed efficiencies.

X. Ancillary Restriction

66. CCCS accepts that Clauses 11.4.1, 11.4.2(i), 11.4.2(ii) and 11.4.2(iii) of the Framework Agreement are directly related and necessary to the implementation of the Proposed Acquisition and constitute ancillary restraints which benefit from the exclusion under paragraph 10 of the Third Schedule to the Act, insofar as they apply to Singapore.

XI. Conclusion

67. For the reasons above and based on the information available, CCCS assesses that the Proposed Acquisition, if carried out into effect, will not lead to a SLC and consequently, will not infringe the section 54 prohibition.

68. In accordance with section 57(7) of the Act, this decision shall be valid for a period of one (1) year from the date of this decision.

Sia Aik Kor
Chief Executive
Competition and Consumer Commission of Singapore