
Section 57 of the Competition Act (Cap. 50B)

Statement of Decision issued by the Competition Commission of Singapore

In relation to the notification for decision of the anticipated merger between Greif International Holding B.V. & GEP Asia Holdings Pte Ltd pursuant to section 57 of the Competition Act

14 April 2011

Case number: CCS 400/003/09

1 INTRODUCTION

1.1 This Statement of Decision sets out the grounds on which the Competition Commission of Singapore (“CCS”) has reviewed the merger between Greif International Holding B.V. (“Greif”) and GEP Asia Holdings Pte Ltd (“GEP”) (collectively the “Parties”). CCS assesses that the merger, if carried into effect, is unlikely to result in a substantial lessening of competition and therefore will not infringe the section 54 prohibition of the Competition Act (Cap. 50B) (“the Act”).

2 THE FACTS AND PARTIES’ SUBMISSION

The Notification

2.1 On 20 July 2009, the Parties filed a joint notification pursuant to section 57 of the Act, applying for a decision from CCS as to whether the creation of a joint venture company, Greif Eastern Packaging Pte Ltd (“Greif Eastern”), will infringe the section 54 prohibition of the Act if the anticipated transaction (the “Transaction”) is carried into effect.

The Parties

Greif

2.2 Greif is a wholly-owned indirect subsidiary of Greif Inc., a Fortune 1000 company listed on the New York Stock Exchange with a market capitalization of US\$2.99 billion as of 18 March 2011¹, and reported net sales of US\$3.5 billion for the fiscal year ended 31 October 2010². In 2006, Greif Inc. expanded into Europe and Asia via the acquisition of the steel drum manufacturing and closures business from Blagden Packaging Group (“Blagden”) ³.

2.3 Greif Inc., together with its subsidiaries (collectively, the “Greif Group”), is a leading global producer of industrial packaging products with manufacturing facilities located in over 50 countries. The Rigid Industrial Packaging & Services segment of the Greif Group provides a complete line of fibre, steel and plastic drums, intermediate bulk containers (“IBC”s), closures, packaging accessories and plastic water bottles⁴.

¹ <http://www.google.com/finance?q=NYSE:GEF> , accessed on 21 March 2011

² <http://www.greif.com/about-greif/default.asp>, as at 21 March 2011

³ <http://www.greif.com/about-greif/history.asp>

⁴ <http://www.greif.com/about-greif/businesses.asp>

2.4 The Greif Group operates in Singapore through its wholly-owned indirect subsidiary, Greif Singapore Pte Ltd (“Greif Singapore”), which manufactures and supplies industrial packaging in Singapore, including steel drums of various capacities, bitumen drums, steel pails, lithographic printing and trading. In June 2009, the company completed the migration of these production activities from its original plant at Tuas to a new one at Pioneer, [X]⁵. In addition to the Pioneer plant, Greif Singapore produces bitumen drums for Shell [X]⁶.

2.5 The turnover for Greif Singapore was [X] for the financial year ended 31 October 2009⁷, or [X]% of Greif Inc.’s global turnover.

GEP

2.6 GEP is an investment holding company incorporated in Singapore. Its business activities include bulk liquid terminalling, manufacturing of industrial packaging products, engineering, procurement, construction and management, global supply of IBCs, and general investment.

2.7 GEP commenced its steel drum manufacturing plant in Singapore in 1979, and subsequently expanded into China in the 1980s. [X].

2.8 The steel drum manufacturing business of GEP in Singapore is operated by Eastern Tankstore (S) Pte. Ltd (“ETS”), a wholly owned subsidiary of GEP. The Jurong plant of ETS is leased from [X]⁸. The Singapore turnover for ETS was [X] for the financial year ended 31 December 2009.

The Transaction

2.9 Greif and GEP propose to incorporate Greif Eastern, and contribute their respective Singapore businesses in the manufacturing and selling of steel drums, bitumen drums and steel pails of various capacities and lithographic printing from Greif Singapore and ETS to Greif Eastern, in consideration for [X]:[X]% equity interest in Greif Eastern respectively⁹. Greif Eastern will be involved in the production, distribution and sale of steel and rigid plastic drums and containers of any size, and the provision of services to such drums and containers.

2.10 Section 54(1) of the Act provides that mergers that may be expected to result in a substantial lessening of competition within any market in Singapore for

⁵ Verified Notes of Meeting with the Parties on 10 February 2010, para 13

⁶ Verified Notes of Meeting with Greif on 10 February 2010, para 13

⁷ Draft unaudited annual financial statements for Greif for financial year ending 31 October 2009

⁸ Verified Notes of Meeting with GEP on 10 February 2010, para 8

⁹ Form M1, para 3.1.14

goods and services are prohibited. Based on the Parties' submissions, CCS has proceeded to evaluate the Transaction as a merger falling within Section 54(2) of the Act.

3 REVIEW PROCESS

3.1 On 20 July 2009, CCS received a complete Form M1 from the Parties. In accordance with the *CCS Guidelines on Merger Procedures*, CCS proceeded with a Phase 1 review of the Transaction.

3.2 On 21 August 2009, CCS informed the Parties that it was unable to conclude at the end of the Phase 1 review that the Transaction did not raise competition concerns. CCS identified several issues which would require further attention, and requested the Parties to submit a completed Form M2 by 12 October 2009.

3.3 On 6 November 2009, the Parties submitted a complete Form M2. Accordingly, CCS proceeded with a Phase 2 review. On 5 April 2010, CCS issued a Statement of Decision (Provisional) ("SDP"), proposing to prohibit the Transaction from being carried into effect by means of a direction pursuant to section 69 of the Competition Act. The Parties were requested to file written representations in response to the SDP within 20 working days from the issuance of the SDP.

3.4 On 19 April 2010, the Parties filed an application to the Minister, seeking to exempt the Transaction from the Section 54 prohibition on the ground of public interest consideration. The Parties submitted that an appropriate and persuasive interpretation of "public interest" would be the "wider economic progress and public benefits" that the Transaction would generate for the Singapore economy and society at large and that there were exceptional and compelling public interest grounds for an exemption to be granted in respect of the Transaction.

3.5 On 7 December 2010, the Minister declined the Parties' application for exemption on the basis that the grounds relied upon by the Parties did not fall within the existing definition of "public interest considerations", which refers to matters of national or public security and defence.

3.6 On 28 February 2011, the Parties filed their written representations in response to the SDP pursuant to their request for an extension of time, following which CCS proceeded to continue its Phase 2 review of the Transaction.

3.7 Since the issuance of the SDP in April 2010, there have been key developments in the Singapore market, which have also been put forth in the Parties' written representations. CCS has taken into account these key developments in its review. It has also noted all the issues that were raised in the Parties' written representations, but in this Statement of Decision, it will focus only on material matters which have a bearing on this Decision.

4 INDUSTRY BACKGROUND

4.1 The Parties' key area of business is the supply of steel drums. A steel drum is a cylindrical container, used for storage and transportation of various industrial products. Steel drums come in a matrix of varying specifications:

- Size: Sizes of steel drums range from large steel drums of 210-litre capacity ("large steel drums"), to bitumen drums of 160-litre capacity ("bitumen drums") particular to Singapore¹⁰, as well as steel pails and small and medium drums of capacity 10 to 120 litres.
- Thickness: Steel drums have top, body and end (i.e. bottom) gauges, each ranging from 0.9mm to 1.2mm typically.
- Sealing: Tight-head drums have sealed tops with screw openings and are generally used to store free-flowing liquids. Open-head drums have removable lids and are generally used for viscous liquids, semi-solid and dry goods.
- Lining: Lined drums are internally coated with a phenolic, epoxy-phenolic or a special lining, and are used for products that would react with plain steel.

4.2 Steel drums form part of a range of rigid industrial packaging products, i.e. containers sold to manufacturers for protection, storage and transportation of industrial products such as chemicals, petrochemicals, pharmaceuticals, food, coatings and resin. Other industrial packaging products include plastic drums, intermediate bulk containers (a cubic container, commonly comprising a rigid external cage, with a capacity of about 1000 litres) ("IBCs"), fibre drums (made from paperboard), reconditioned steel drums and other products such as flexible bags and paper cartons. An important consideration for downstream manufacturers is using a container that is chemically inert or non-reactive to the material being shipped.

¹⁰ "Such specifications are likely to be historical, rather than based on the characteristics of the product or the customers' manufacturing processes, as such customers are currently using other forms of industrial packaging for bitumen in other countries..." (Form M1, para 6.1.12)

5 SIGNIFICANT RECENT INDUSTRY DEVELOPMENTS

5.1 On 30 November 2010, the Mauser Group, the main competitor to the Parties, announced plans to triple its steel drum production in Singapore by constructing a new plant to be completed by 2012. The new plant will produce lined and unlined steel drums of various specifications, and will supersede Mauser's existing plant in Singapore, which has been manufacturing only unlined drums since 2006¹¹.

5.2 In January 2011, ExxonMobil Asia Pacific Pte Ltd ("ExxonMobil"), one of the only two customers of bitumen drums in Singapore, informed Greif that it intends to cease the use of bitumen drums within 2011¹². ExxonMobil confirmed that it will not be using any alternative packaging in lieu of bitumen drums to transport bitumen in packages. Bitumen will continue to be sold in bulk, subject to vessel availability¹³.

6 COMPETITION ISSUES

6.1 In reviewing the Transaction, CCS' main concern is that the Transaction may substantially lessen competition in the supply of new large steel drums to Singapore, due to the horizontal concentration between the two closest rivals in the market.

6.2 CCS also considered whether the Transaction may substantially lessen competition in the supply of bitumen drums in Singapore, due to the loss of GEP as the only other potential supplier of bitumen drums. As GEP has existing bitumen drum equipment and know-how to promptly re-commence production quickly should the opportunity arise, the transfer of GEP's bitumen drum equipment to Greif, or the elimination of this equipment from the market, would cement Greif's current position as the monopoly supplier. However, ExxonMobil has recently informed Greif that it intends to cease the use of bitumen drums in 2011, while the only other customer, Shell Eastern Petroleum Pte Ltd ("Shell"), is not concerned about the Transaction because it will be able to bargain on a global basis¹⁴. CCS therefore concludes that there is no longer any serious competition

¹¹ Mauser's press release dated 30 November 2010 titled "Mauser builds new Steel Drum Plant in Singapore", available at http://www.mausergroup.com/en/press/press_release/419.html?view=57

¹² Letter from Allen & Gledhill dated 11 March 2011, para 2(ii), and email from ExxonMobil Asia Pacific Pte Ltd to Greif dated 18 February 2011, revising the order of bitumen drums from [3<] to [3<] prior to the cessation of its order.

¹³ Submission by ExxonMobil dated 14 March 2011

¹⁴ Verified Notes of Meeting with Shell on 11 February 2010, para 23

issue with regard to the supply of bitumen drums in Singapore. In addition, CCS notes GEP's submission that [X]¹⁵.

7 MARKET DEFINITION

(a) Product Market

Parties' Submission

7.1 The Parties submit that the area of overlapping business is the supply of large steel drums in Singapore. While Greif is also involved in the supply of other rigid industrial packaging products such as bitumen drums and steel pails, and lithographic printing, GEP is currently only involved in the manufacture of steel drums¹⁶.

7.2 The Parties submit that demand for steel drums in Singapore has started to decline as customers in Singapore have begun to partially switch to alternative types of industrial packaging products¹⁷. They have submitted a list of customers for which other industrial packaging products are possible alternatives¹⁸. The Parties further submit that alternative types of industrial packaging products such as bulk packaging and fibre drums, are substitutes for some customers and would place competitive constraints on the prices of steel drums¹⁹. The Parties submit that, in particular, IBCs are relatively cheap and enable shippers to send more product per pallet load to their customers than with steel or plastic drums²⁰. Further, IBC usage in Southeast Asia has been witnessing significant growth since the 1990s and was projected to have significant potential for long-lasting future growth²¹.

¹⁵ Letter from Allen & Gledhill dated 11 March 2011, paras 2 and 3

¹⁶ Form M1, paras 3.17 and 6.1.1

¹⁷ Form M2, para 3.7.3

¹⁸ Responses to Key Issues Identified by CCS in Phase 2 Letter, Table 1

¹⁹ Form M1, para 6.1.10

²⁰ Form M1, para 3.2.9

²¹ Form M1, para 3.2.9

CCS' Assessment

7.3 CCS agrees with the Parties' submission that there is horizontal overlap between the Parties' businesses in the supply of large steel drums in Singapore. CCS also concurs that the market for the supply of large steel drums should not be segmented further according to particular specifications of large steel drums, as these are minor differences in the product which manufacturers of large steel drums are generally able to cater to relatively easily.

7.4 With regard to the substitutability of other industrial packaging products (such as plastic drums and IBCs) and reconditioned steel drums, CCS has proceeded on the conservative basis that new large steel drums constitute a separate product market, and concluded that no substantial lessening of competition arises from the Transaction in this market, as detailed in the subsequent parts of this Decision. If the relevant market is expanded to other industrial packaging products, competition concerns would be even more remote.

(b) Geographic Market

Parties' Submission

7.5 The Parties submit that the narrower relevant geographic market for the purposes of the notification could be Singapore, which includes a number of Malaysian suppliers that currently supply steel drums to Singapore, or broadened to Singapore and Malaysia, although transport costs limit the distance from which it is viable to import industrial packaging products to Singapore²². According to the Parties, imports from neighbouring geographical regions like Malaysia are viable alternatives for customers in Singapore, particularly given the close geographic proximity of Malaysia to Singapore, and the small geographical size of Singapore²³. The Parties have highlighted that the distances between Singapore and Malaysia suppliers, such as PGEO Malaysia Sdn Bhd ("PGEO") in Johor Bahru and Stanta Mauser Malaysia Sdn Bhd ("Stanta Mauser") in Selangor (12 and 325km respectively), are shorter than in the geographical market defined by the UKCC in the *Greif/Blagden* merger case (360km from Schütz GmbH und Co's ("Schütz Group") manufacturing facility in the Netherlands to the United Kingdom)²⁴.

7.6 The Parties submit that transport costs from certain regions of Malaysia would not be prohibitive for imports²⁵. The Parties noted that [X]²⁶. Further,

²² Form M1, para 6.1.15

²³ Form M1, para 3.2.12

²⁴ Form M2, para 2.2.20

²⁵ Form M1, para 3.2.12

²⁶ Form M2, para 2.2.13

given the geographical proximity of Malaysia to Singapore, manufacturers of steel drums from Malaysia are able to transport their steel drums to customers in Singapore on a same-day basis (within one to four hours)²⁷.

CCS' Assessment

7.7 CCS notes that the narrower version of the relevant geographic market submitted by the Parties has already included inbound substitution from Malaysian suppliers to Singapore, including PGEO and Stanta Mauser²⁸. The only difference between the narrower and the wider versions is the inclusion of domestic sales in Malaysia, i.e. the sale of steel drums from suppliers in Malaysia to buyers in Malaysia²⁹.

7.8 In any case, CCS has proceeded on the basis that the relevant geographic market is Singapore, but the suppliers include companies in Malaysia who are supplying to Singapore, e.g. PGEO and Stanta Mauser. Even if the relevant geographic market were extended to include Malaysia, it would make no difference to CCS' conclusion, as the potential competitive constraints imposed by Malaysian suppliers are fully addressed in the context of barriers to entry, and in the end, CCS finds no substantial lessening of competition within Singapore arising from the Transaction.

7.9 In short, CCS considers the product market to be the market for new large steel drums of various thickness, types and lining in Singapore (the "Relevant Market"). The geographic market is Singapore, but the suppliers include Malaysian companies who are able to supply to Singapore.

8 MARKET STRUCTURE

(a) Market Share and Market Concentration

8.1 The market shares of suppliers in the Relevant Market in Singapore dollar values from 2006 to 2010 are tabulated in Table 8.1 below³⁰. The market shares of suppliers in the Relevant Market by volume presents a similar picture.

²⁷ Form M2, para 2.2.16

²⁸ Form M1, Annex 11, Table 1

²⁹ Form M1, Annex 11, Table 2

³⁰ Form M1, Annex 11, Table 1; and written representations in respect of CCS' SDP dated 28 February 2011, Table 3

Table 8.1: Large Steel Drum Market – Market Share by Value (2006-2010)

Supplier	2006	2007	2008	2009	2010
Greif Singapore (a)	[60-70]%*	[60-70]%	[55-65]%	[55-65]%	[50-60] %
ETS (b)	[25-35]%	[20-30]%	[25-35]%	[20-30]%	[20-30] %
Mauser Singapore	[0-10]%	[0-10]%	[0-10]%	[5-15]%	[5-15]%
PGEO	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[5-15]%
Stanta Mauser	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%
Greif Eastern (pro-forma) = (a) + (b)	[90-100]%	[85-95]%	[85-95]%	[80-90]%	[75-85]%

* Pro-forma figure based on combined market share with Hong Leong China Singapore (Blagden Singapore) which was acquired by Greif in 2007

8.2 Based on the figures for the past five years above, the pro-forma market share of Greif Eastern, the merged entity, will be above the indicative threshold of 40%³¹. The closest competitor to Greif Eastern would be Mauser with a market share of [5-15]% in 2010. If we consider Stanta Mauser to be the same supplier as Mauser³², their combined market share would be [10-20]%. The remaining [5-15]% share is accounted for by PGEO.

8.3 However, given Mauser's announcement in November 2010 with regard to its new plant which triples its production capacity by 2012, it is also relevant for CCS to consider the projected market share figures, based on capacity, when Mauser's new plant enters into operation.

8.4 Mauser informed CCS that assuming [X], and [X], Mauser's new plant would be producing about [X] drums in a year. Mauser intends to [X]. Mauser, however, added that it would not [X]³³.

8.5 Based on the above, the projected market share of suppliers in the Relevant Market by (volume) capacity in 2012 is set out in Table 8.2 below. On this basis, the combined market share of the Parties would fall to [X]%, and that of the largest competitor, Mauser, would rise to [X]%.

³¹ CCS Guidelines on the Substantive Assessment of Mergers, para 5.15

³² Mauser Singapore is a subsidiary of the Mauser Group and Stanta Mauser is 51% owned by the Mauser Group (Form M1, para 3.2.7 and <http://www.mausergroup.com/en/company/17.html>)

³³ Verified Notes of Meeting with Mauser on 9 March 2011, para 2.

Table 8.2: Large Steel Drum Market – Estimated Market Share by Capacity (2012)³⁴

Manufacturer	Line Speed	Efficiency	1 Shift	2 Shifts	% Market Share
Greif Singapore – Line 1	[X]	[X]	[X]	[X]	[X]
Greif Singapore – Line 2	[X]	[X]	[X]	[X]	
ETS Singapore	[X]	[X]	[X]	[X]	[X]
Mauser Singapore	[X]	[X]	[X]	[X]	[X]

(b) Barriers to Entry and Expansion

Parties' Submission

8.6 The Parties submit that the barriers to entry and expansion are not high as there are no prohibitive barriers to entry in terms of legal or regulatory barriers, investment costs or set up time³⁵ and it would not be difficult for competitors to scale up their production to absorb an increase in demand post-merger³⁶. The Parties further submit that Mauser's expansion plan contradicts any allegations that there are high barriers to entry and expansion by new competitors to the market for steel drums in Singapore³⁷.

CCS' Assessment

8.7 CCS market enquiries show that new entrants would require nine months³⁸ to 18 months³⁹ before becoming fully operational, depending on the availability of machine parts and the necessity to erect new facilities. A large initial capital outlay⁴⁰, finding a suitable plot of land and the right staff and a low rate of return⁴¹

³⁴ Written representations in respect of CCS' SDP dated 28 February 2011, para 2.21 and Verified Notes of Meeting with Mauser on 9 March 2011, para 2.

³⁵ Form M2, paras 3.10.12, 3.10.1, 3.10.2 and 3.10.3, Form M1 para 3.2.29

³⁶ Form M1, para 3.2.28

³⁷ Written representations in respect of CCS' SDP dated 28 February 2011, para 2.17

³⁸ E.g. Conference call with Dow on 29 July 2009, para (xix)

³⁹ Verified Notes of Meeting with [X]

⁴⁰ Form M2, Table 10

are the typical challenges faced by a potential entrant. CCS also obtained indications that few customers were willing and able to sponsor a new entrant or existing player by offering volume commitments (which would still be subject to a qualification process that could take up to six months)⁴².

8.8 Prior to the announcement of the Mauser Group's expansion plans in Singapore, CCS was of the view that Mauser would not pose a significant competitive constraint because Mauser does not produce lined drums⁴³ and only offers [X] in Malaysia⁴⁴ which is problematic for some customers⁴⁵. Many customers believed that Mauser's capacity was limited. Mauser was also grappling with quality issues in the previous few years⁴⁶, and [X]. Mauser did not provide any concrete expansion plans when CCS requested for this information during the meeting on 7 December 2009.

8.9 However, in March 2011, Mauser indicated to CCS that the quality issues had been resolved⁴⁷ and the new plant would be capable of producing both lined and unlined drums, of gauges between 0.8mm and 1.2mm, and also open-top drums, which would be the complete portfolio of large steel drums required by customers⁴⁸. Mauser further shared that it was expanding because it was seeing more demand in Singapore and aimed to take away market shares from competitors, such as Greif⁴⁹. Mauser is confident of getting additional orders with its new plant from large customers⁵⁰ and stated that a market share target of about [X]% would be realistic once the new plant was set up⁵¹.

8.10 Based on the submissions by the Parties and by Mauser, CCS estimates that the Relevant Market will have [X]% of excess capacity when Mauser's new plant becomes operational in 2012⁵². In particular, Mauser's increased capacity after expansion is likely to be sufficient to meet the demand of customers should they decide to switch from Greif Eastern. CCS also notes that Mauser's targeted

⁴¹ Verified Notes of Meeting with GEP on 10 February 2010, paras 3 and 4

⁴² Views expressed by [X], [X], [X] and [X] in the Survey

⁴³ Notes of Meeting with the Parties on 10 February 2010, para 13

⁴⁴ Verified Notes of Meeting with Mauser on 7 December 2009, para 10

⁴⁵ Verified Notes of Meeting with Mauser on 7 December 2009, para 14

⁴⁶ Verified Notes of Meeting with Mauser on 7 December 2009, para 23

⁴⁷ Verified Notes of Meeting with Mauser on 9 March 2011, para 19

⁴⁸ Verified Notes of Meeting with Mauser on 9 March 2011, para 16

⁴⁹ Verified Notes of Meeting with Mauser on 9 March 2011, para 3

⁵⁰ Verified Notes of Meeting with Mauser on 9 March 2011, para 17

⁵¹ Verified Notes of Meeting with Mauser on 9 March 2011, para 21

⁵² Estimated overcapacity is calculated based on the difference between the suppliers' (Greif Singapore, ETS Singapore and Mauser Singapore) estimated capacity in 2012 (assuming two shifts) and the volume of large steel drums supplied in 2010, as a proportion of the suppliers' estimated capacity in 2012.

commencement of production in the new plant, within two years, is considered timely.

8.11 In view of the above, CCS is satisfied that Mauser's expansion in Singapore is sufficient in likelihood, scope and time to deter or constrain any attempt by the Parties or their competitors to exploit the reduction in rivalry post-merger. Mauser's role would be comparable to the role played by the Schütz Group in UKCC's decision to clear the *Greif/Blagden* merger⁵³. This is especially so given that Mauser has indicated that its average production costs would be lower in the new plant as it would be using highly automated new machines to [REDACTED]⁵⁴.

8.12 For completeness, CCS also assessed whether there would be further new entry or expansion in response to the merger. In particular, CCS considered the likelihood of expansion by Malaysia competitors but found that the competition from Malaysian suppliers to Singapore would be affected by transport costs⁵⁵ and non-price factors such as longer lead times, high storage costs, customs delays⁵⁶ and quality issues⁵⁷. In any case, the competitive constraint from Mauser in Singapore is sufficient, even in the absence of competition from Malaysian suppliers.

(c) Countervailing Buyer Power

Parties' Submission

8.13 The Parties submit that a large proportion of steel drums in Singapore is supplied to large multinational companies ("MNCs") who are able to exercise significant buyer power, given their large purchase volumes, and this is facilitated by the existence of ready alternative suppliers⁵⁸. Given that contracts with large multinationals tend to also be negotiated on a global scale, the Parties submit that the merger does not add any additional leverage to Greif as a global MNC as the operations of the merger is limited to Singapore⁵⁹.

⁵³ UKCC News Release *Greif/Blagden Merger Cleared*, dated 17 August 2007. CCS notes that, in clearing the *Greif/Blagden* merger, the UKCC found the market share of 50-60% of the merged entity to be a cause of concern. However, the competitive threat imposed by the Schütz Group's new plant in the Netherlands "changed the balance of expectation", leading to the clearance of the merger.

⁵⁴ Verified Notes of Meeting with Mauser on 9 March 2011, para 6

⁵⁵ View expressed by [REDACTED], [REDACTED], and [REDACTED], in particular, in the Survey; Verified Notes of Meeting with [REDACTED].

⁵⁶ Views expressed by [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], in particular, in the Survey.

⁵⁷ View expressed by [REDACTED], [REDACTED], and [REDACTED], in particular, in the Survey.

⁵⁸ Form M1, paras 3.2.14 and 3.2.15

⁵⁹ Written representations in respect of CCS' SDP dated 28 February 2011, para 5.69

8.14 The Parties also submit that some customers do not commit to purchase volumes, and contracts are usually short-term or may be terminated by the customers upon notice and without cause⁶⁰. Large customers are also able to dictate fixed components in pricing formulas in their tenders, with the result that prices for the supply of steel drums in Singapore are kept low [X<]. For such customers, [X<]⁶¹.

8.15 The Parties further submit that it is conceivable and likely for major customers to exercise buyer power through sponsoring new entrants, by giving new entrants price and volume commitments. They cite the fact that two previous customers of GEP (Shell and ExxonMobil) for the supply of bitumen drums had, through a competitive tender process, awarded contracts to Greif, which resulted in Greif capturing 100% of the market for the supply of bitumen drums in Singapore⁶².

8.16 For the other smaller customers, the Parties submit that there is no reason to assume that they would not be able to credibly switch to other suppliers, given the availability of alternative suppliers of large steel drums in Singapore and Malaysia, as well as alternative packaging products. In fact, smaller customers generally require smaller volumes of large steel drums and are more likely to have the flexibility of procuring the excess manufactured capacity of suppliers in the spot market⁶³.

CCS' Assessment

8.17 CCS recognizes that some global customers would have some degree of bargaining power⁶⁴. Further, any existing contracts with customers that incorporate a pricing formula may constrain attempts by Greif Eastern to exercise market power.

8.18 In any case, even if countervailing buyer power is limited, the expansion of Mauser in Singapore will lead to significant excess capacity in the Relevant Market. As a top global supplier of steel drums, Mauser is likely to be a credible alternative for customers who negotiate the supply of steel drums on a global scale. CCS is therefore of the view that the planned expansion of Mauser in Singapore would enhance the bargaining power of these global customers.

⁶⁰ Form M1, para 3.2.14

⁶¹ Form M1, para 3.2.19

⁶² Form M1, paras 3.2.16 and 3.2.17

⁶³ Written representations in respect of CCS' SDP dated 28 February 2011, para 5.82

⁶⁴ However, the fact that customers are large will not be sufficient in itself to conclude that buyer power is strong. See CCS Guidelines on the Substantive Assessment of Mergers, para 7.14

(d) Conclusion on Market Power

8.19 Given Mauser's planned expansion and the significant excess capacity anticipated in 2012 which will improve the bargaining power of customers in the Relevant Market, CCS concludes that the market structure post-Transaction does not support a conclusion that competition will be substantially lessened.

9 ASSESSMENT OF COMPETITIVE EFFECTS

9.1 As mentioned above, CCS is satisfied that Mauser's expansion in Singapore is sufficient in likelihood, scope and time to deter or constrain any attempt by merging parties or their competitors to exploit the reduction in rivalry post-merger. In particular, Mauser has indicated its intention to gain market share by winning over the existing customers of its competitors. With its new plant, Mauser will have sufficient excess capacity to cater to a large proportion of the market, and will also be capable of producing the full range of specifications of steel drums demanded by customers.

10 EFFICIENCIES

10.1 The Parties submit that the Transaction is expected to create efficiencies through [X]⁶⁵. The estimated cost savings are expected to be [X] per year, with the largest savings stemming from [X]⁶⁶. The Parties further submit that the cost of steel is about [X]% of the overall cost of producing steel drums in Singapore, and that a merged entity could reduce costs from [X]⁶⁷. The Parties have also claimed that the Transaction would allow for [X].⁶⁸

10.2 As the Transaction does not substantially lessen competition in the first instance, it is not necessary for CCS to weigh any efficiency generated by the Transaction against any harm on competition.

11 ANCILLARY RESTRICTIONS

11.1 Clause 15.1 of the Joint Venture Agreement obliges the Parties (and their subsidiary, ultimate parent company or a subsidiary of the ultimate parent

⁶⁵ Form M1, para 3.2.30

⁶⁶ Form M1, para 3.2.33

⁶⁷ Form M1, para 3.2.1

⁶⁸ Form M1, para 3.2.1

company) to refrain from competition within the business of [X]. This obligation continues while the Parties remain as a member of Greif Eastern and for a period of [X] from and/or after the termination of the merged entity.

11.2 Pursuant to the Parties' agreement to amend Clause 15.1 of the Joint Venture Agreement to limit the duration of the same to [X]⁶⁹, CCS is of the view that Clause 15.1 (as amended) of the Joint Venture Agreement is directly related and necessary to the implementation of the merger and therefore constitutes an ancillary restriction. Consequently, it falls within the exclusion under paragraph 10 of the Third Schedule of the Act.

12 THE DECISION

12.1 For the reasons above and based on the information available, CCS assesses that the Transaction, if carried into effect, will not infringe the section 54 prohibition. In accordance with section 57(7) of the Act, this decision shall be valid for a period of one year from the date of this decision.



Yena Lim
Chief Executive
Competition Commission of Singapore

⁶⁹ Letter from Allen & Gledhill to CCS dated 8 April 2011, para 2