Competition Commission SINGAPORE

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

**Grounds of Decision issued by the Commission**

**Notification for Decision: Proposed Acquisition by Glencore International AG of Chemoil Energy Limited**

**24 February 2010**

**Case number: CCS 400/005/09**

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Confidential information in the original version of this Decision has been 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 [✄]

## I. INTRODUCTION

1. On 11 January 2010, the Competition Commission of Singapore ("CCS") received a Notification for Decision pertaining to an anticipated transaction (the "Transaction"), by which Glencore International AG ("Glencore") will acquire about 50.81% of the ordinary shares of Chemoil Energy Limited ("Chemoil"), through Glencore's subsidiary, Singfuel Investment Pte Ltd ("Singfuel"). Glencore and Chemoil are collectively referred to as "the Parties". The Transaction has yet to be completely effected.[1]

2. The Parties have informed CCS in their submission that they have made a filing to the Federal Trade Commission in the U.S. under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 on 7 January 2010, for which the waiting period lapsed on 8 February 2010. The Parties have filed a Notification of a Concentration made pursuant to Council Regulation (EC) No. 139/2004 with the European Commission ("EC") on 14 January 2010 and a decision was reached on 18 February 2010.

3. CCS has concluded that the Transaction, if carried into effect, will not

[1] In the first phase of the notified acquisition, Glencore will, through its subsidiary Singfuel Investment Pte Ltd acquire about 50.81% of the ordinary shares of Chemoil from the Chandran Family Trust. In the second phase, Singfuel has to make a mandatory cash offer for all remaining Chemoil's shares that are not already owned, controlled or agreed to be acquired by Singfuel, in accordance with Section 139 of the Securities and Futures Act Chapter 289 of Singapore and the Code.

infringe the section 54 prohibition of the Competition Act ("the Act").

## II. THE PARTIES

### (a) Glencore

The Glencore group of companies (the "Glencore Group"), founded in 1974 and headquartered in Baar, Switzerland, is a privately held group owned by its management and employees. The Glencore Group is a leading global supplier of commodities and raw materials to industrial consumers. In addition to its own production[2], physical commodities such as metals and minerals, crude oil and oil products, coal and agricultural products are also sourced from third parties or benefited from the refining, processing or marketing capability of the Glencore Group. The Glencore Group also provides financing, logistics and other supply chain services to producers and consumers of commodities.

### (b) Chemoil

4. Chemoil is a company registered in Hong Kong and since December 2006, has been listed on the Main Board of the Singapore Exchange Securities Trading Limited ("SGX-ST"). Chemoil is a global independent supplier of marine fuels with operations and service centres in the world's major bunkering markets in the Americas, Europe and Asia. Their core marine fuel business includes terminal storage of fuel oil, barge ownership and operations. Chemoil, being vertically integrated, delivers through all the stages of the marine fuel supply chain by sourcing marine fuel from national oil companies and other fuel suppliers; using Chemoil's owned or chartered vessels to ship the fuel from source to storage terminals which are either owned or leased by Chemoil; and delivers fuel oil to customers on owned or leased barges. Chemoil is operated through 3 segments, namely, retail business segment, cargo business segment and ex-wharf business segment.

## III. BACKGROUND INFORMATION

### (a) Fuel oil

5. Fuel oil is any liquid petroleum product that is burned in a furnace or boiler for the generation of heat, or used in an engine for the generation of power.

6. Crude oil, which is the untreated raw form of fuel oil, is separated into fractions by fractional distillation at the oil refinery: the oil is heated, causing

[2] Directly owned production assets include a majority stake in a copper/cobalt mine in Zambia, a zinc smelter on Sardinia and a majority stake in a South African coal mine. In addition, Glencore holds a 34.5% interest in Xstrata (which is in the metals and minerals business), 44% economic (39% voting) interest in Century Aluminium, 70.6% in Minara Resources, 72.2% in Katanga Mining and 32.2% in Recylex.

different types of oil within the crude to separate at different boiling points[3]. Fractional distillation[4] is typically conducted in a distillation column which siphons off various factions as they are precipitated out. Please see Annex A.

7. In the distillation process, the fractions at the top of the distillation column like propane gas, naphtha, automotive gasoline and jet fuel have lower boiling points than the fractions at the bottom and are siphoned off in the early part of the distillation process. Heavier petroleum products, such as diesel and lubricating oil, precipitate out more slowly. Fuel oil is among the last to precipitate out. The heavy bottom fractions remaining after fuel oil is extremely dense and is often cracked[5] into lighter, more useful products and mixed, for example, with tar for use as asphalt on roads and for sealing roofs.

8. Industry sources[6] reckon that marine fuel take up about [✂] of global fuel production. The fuel oil market is deemed to be the wholesale market for bunker market. The suppliers of fuel oil are the oil majors and the oil traders. They sell their cargoes to bunker suppliers and power generating companies.[7]

**(b) Marine fuel oil (also known as "bunker fuel")**

9. Marine fuel oil, a type of fuel oil is used to power marine vessels and also for small scale power generation.

10. Marine fuel can be divided into two main categories, namely distillate (which is further subdivided into Marine Gasoil ("MGO") and Marine Diesel Oil ("MDO")) and residual oil. Residual oil are residues left over from refining crude oil in a refinery and are traditionally categorised according to their kinematic viscosity which is measured in unit of Centistokes (cST) such as 180 cST, 380 cST, 500 cST and 1,000 cST of which 380 cST is the most commonly sold grade of marine fuel oil. About [✂] of marine fuel oil consumed globally is residual oil.[8] In general, the higher a fuel oil's viscosity, the cheaper is the price and because of the differences in viscosities, the different grades of fuel oil have to be stored separately. Residual oil is also referred to as residual fuel oil, heavy fuel oil (HFO), intermediate fuel oil (IFO), or sometimes simply fuel oil.[9] As compared to residual fuel oil, distillates such as MDO and MGO are relatively not commonly used.

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[3] A boiling point is the temperature at which the vapour pressure of a liquid is equal to the external pressure on the liquid. All liquids have an infinite number of boiling points.

[4] Fractional distillation is the separation of a mixture into its component parts, or fractions, such as in separating chemical compounds by their boiling point by heating them to a temperature at which several fractions of a compound will evaporate. Generally, the component parts boil at less than 25°C from each other under a pressure of one atmosphere (ATM).

[5] In petroleum geology and chemistry, cracking is the process whereby complex organic molecules such as kerogens or heavy hydrocarbons are broken down into simpler molecules (for e.g. light hydrocarbons). The rate of cracking and the end products are strongly reliant on the temperature and presence of any catalysts.

[6] [✂].

[7] [✂].

[8] [✂].

[9] [✂].

11. The global market for marine fuel oil is estimated to be worth about US$140 billion per annum.[10]

### (c) Bunkering services

12. Bunkering refers to the actual pumping of fuel into ships. This is analogous to car drivers topping up their tanks at the petrol stations. The fuel could be transferred from a storage terminal or a bunker barge to a receiving vessel. Bunkering operations are performed in the port of Singapore where bunker barges would go alongside ships at the anchorages or berth.

13. The ship bunkering industry in Singapore comprises shipowners, operators, charterers, bunker suppliers, bunker craft operators and bunker surveyors.

14. In Singapore, all bunker suppliers and bunker craft operators are licensed by the Maritime and Port Authority of Singapore ("MPA"). They are required to comply with the Singapore Standard Code of Practice for Bunkering - SS600 as a licensing requirement when their vessels call at Singapore. The Singapore Standard for Quality Management for Bunker Supply Chain (QMBS) or SS 524 2006 is the first national quality management standard for the bunkering industry. Developed by the MPA and SPRING Singapore, in collaboration with experts from the industry, the SS 524 aims to set up an unbroken chain of control over the quality of bunker fuel supplied at the port. It looks into the management system for the entire bunker supply chain from procurement to delivery of bunker to vessels in the Port of Singapore.

### (d) Ex-wharf business

15. Ex-wharf solely refers to physical trade or sales; it simply means cargo sales where the cargo (marine fuel in this context) is offloaded onto the cargo tank of the bunker or shipping vessel. In brief, bunkering refers to the supplying of fuel as bunkers to the receiving vessel. The term ex-wharf refers to the trading of fuel as cargo.

## IV. THE MERGER

16. The Transaction will be carried out in two phases. In the first phase, Glencore will acquire, through its subsidiary Singfuel, approximately 50.81 per cent of the ordinary shares in Chemoil from Chandran Family Trust for approximately US$233 million, by way of a Share Purchase Agreement entered into between Glencore and Chemoil on 14 December 2009. In the second phase, in accordance with Rule 14 of the Singapore Code on Take-overs and Mergers (the "Code"), Singfuel will make a mandatory cash offer (the "Offer") for all the Chemoil shares, other than those already owned, controlled or agreed to be acquired by Glencore.

[10] Paragraph 6.1.8 of the Form M1 submitted on 11 January 2010 [✂].

17. Chemoil also holds a 67.69% interest in an Indian-registered software company called California Software Company Ltd ("Calsoft")[11]. The directors of Chemoil, who are independent for the purposes of the public offer made by Singfuel in Singapore, will review the opinion of independent financial advisors before deciding whether or not to recommend the public offer made by Singfuel in Singapore. The board of directors of Calsoft may, if they so desire, issue unbiased comments and a recommendation on the public offer made by Singfuel in India. For these purposes, they would need to seek the opinion of an independent merchant banker or of the committee of independent directors of Calsoft.

18. Closing of the Share Purchase Agreement is conditional upon merger control approvals in Singapore, the United States and the European Union.

19. Glencore submits that its acquisition of a majority stake in Chemoil will [✂]. In brief, Glencore's acquisition of Chemoil will enable Glencore to be a more efficient player in the fuel oil and bunkering services markets.

20. On the basis of the Parties' submission that the Transaction constitutes a merger pursuant to section 54(2)(b) of the Act, CCS proceeded to assess the competitive effects of the Transaction.

## V. POTENTIAL COMPETITION ISSUES

21. The Parties submit that businesses of Glencore and Chemoil overlap horizontally in the supply of bunkering services globally and in Singapore. CCS therefore examined whether the Transaction potentially leads to substantially lessening of competition in the market in which bunkering services are provided, whether by way of non-coordinated or coordinated effects.

22. There are also vertical integration issues arising from the Transaction as the Parties have a vertical trading relationship in the supply of marine fuel where Glencore and Chemoil have previously supplied marine fuel to each other globally and in Singapore, specifically:

- [✂].[12]

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[11] Part 2A paragraph 2.2.16 and 2.2.17 of the Form M1 submitted on 11 January 2010: Calsoft is based in Chennai and has 12 offices worldwide, including in Singapore. Calsoft is involved in two main business segments, namely product engineering services and enterprise solutions. Its product engineering services offer product development, testing and QA, sustenance and embedded engineering services, and embedded systems design to new media companies and to manufacturers of computer hardware and peripherals. Its enterprise solutions business develops CRM applications and enterprise information management applications for Oracle, Microsoft and Siebel products and technologies.

[12] [✂].

## VI. RELEVANT MARKETS

### (i) Supply of marine fuel oil (or bunker fuel)

Parties' submission

23. For the purposes of this notification, the Parties submit that there are two relevant markets in their businesses where horizontal overlap occurs:

a) the supply of fuel oil, or on a narrower basis, marine fuel; and

b) the provision of bunkering services

24. The technical specifications of marine fuel oil are standardized worldwide with the main difference being in the viscosity of the marine fuel. There are also no specifications unique to the Parties and those other suppliers of marine fuel in Singapore are also able to sell each of the main marine fuel specifications.[13] In addition, marine fuel is specifically for fuelling ships and is not substitutable with other products.[14]

25. [✂] Glencore is not involved in the manufacturing of marine fuel in Singapore and hence there is no relevant secondary market for by-products of marine fuel which may be affected by the Transaction.[15]

26. There is feasible and non-prohibitive supply-side substitution at each level of the supply of marine fuels. This is because raw materials, technology and facilities used for the production of marine fuels can also be use to produce other types of petroleum-derived fuels. Although there is limited demand substitutability as customers (namely, shipping vessels) use different types of fuel for their respective intended purposes, suppliers of these different types of fuel products can easily switch production from one type of fuel to marine fuel, in terms of technical feasibility and cost considerations.[16]

CCS' assessment

27. After having considered the results of its investigations, CCS is of the view that it is not necessary to determine whether the product market is fuel oil or marine fuel oil as the ultimate outcome of the competition analysis is the same for both cases.[17] Based on a third party industry research report provided by the Parties[18] as well as feedback from third parties and respondents to CCS' inquiries, CCS notes that the marine fuel market is a low margin/high volume business and

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[13] [✂].
[14] Part 2B, paragraph 6.1.18 of Form M1 submitted on 11 January 2010.
[15] [✂].
[16] Part 2B, paragraph 6.1.21 of the Form M1 submitted on 11 January 2010.
[17] Also, CCS understands that the merged entity only has an estimated market share of [10–20]% in Singapore and [5–10]% worldwide for the supply of marine fuels.
[18] [✂].

highly price competitive. Bunker fuel prices vary between ports and regions. Singapore and Rotterdam provide benchmark prices for Asia and Europe respectively. Bunker fuel prices are determined by crude oil prices [19] as well as global demand and supply

28. Different grades of marine fuel oil are not substitutable as a shipping vessel typically carries different grades of marine fuel oil which are used at various stages of running the ship. For instance, light diesel oil, which is the better quality fuel oil, is used to fire up the engine and thereafter the lower grade (higher viscosity) and cheaper 380 cST marine fuel oil is used to run the ship since the latter requires high temperature to operate and hence cannot be used to start the ship's engine. In addition, depending on the makeup of the ship, some ships are unable to run on low sulphur oil which is more environmentally friendly. For such cases, the ship owner would have to upgrade the engine which is a costly issue.

29. CCS received feedback that the market trend is towards heavier marine fuel oil as shipping vessel operators find that that is more cost effective but this trend is constrained by uncertainty over greenhouse gas ("GHG") regulation.

30. Despite the non-demand substitutability of the different grades, there was third party support of the Parties' claim that marine fuel products are generic commodities as there are numerous suppliers in the Singapore market.

(ii) <u>Bunkering services</u>

<u>Parties' submission</u>

31. In relation to the bunkering services, the Parties submit that this market in Singapore is highly fragmented and characterised by intense price competition. There are 76 bunker fuel suppliers in Singapore and Chemoil is the 19th largest bunker supplier by volume while Glencore is not the top 20 listed suppliers of bunker fuel by volume in Singapore.[20]

32. The principal suppliers of marine fuel for bunker suppliers are as follows:

(a) the "majors" whose marine fuel divisions own and/or operate bunkering services in certain ports (such as ExxonMobil, BP, Royal Dutch Shell, Chevron, [✂]);

(b) the large "independents" (such as [✂], Equatorial and Chemoil);

(c) traders like OW Bunkering, Glencore, [✂]; and

(d) regional businesses with local bunkering services facilities (like Equatorial, [✂])

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[19] [✂].

[20] Part 2A, paragraph 3.2.8 of the Form M1 submitted on 11 January 2010, quoting Maritime Port Authority of Singapore.

33. There are also large competitors such as BP Singapore Pte Ltd ("BP"), ExxonMobil Asia Pacific Ltd ("Exxon"), Equatorial Marine Fuel Management Service ("Equatorial"), Shell International Eastern Trading ("Shell") and Global Energy Trading Pte Ltd ("Global") who have substantial competitive advantages over the Parties. BP, Exxon, Shell, Equatorial and Global have been ranked as the top 20 bunker suppliers by volume in 2009 by MPA.

34. There is also customer bargaining power as the buyers of bunker fuel for consumption are the operators of ocean going ships, containers, tanker fleets and time charter operators.[21]

<u>CCS' assessment</u>

35. CCS agrees with the Parties that the bunkering services market is a highly competitive market as there are over 70 licensed suppliers in Singapore whereby customers could buy from the most price competitive sources. CCS' investigations have not yielded any results that would justify a different conclusion.

36. The bunkering industry is well-established and mature and Singapore is world's busiest bunkering port since 1988.[22] There is common consensus among third party feedback that there are plenty of alternative suppliers to turn to should the merged entity increase the prices of bunkering services.

37. CCS also notes that the bunkering services market, regulated by the Maritime and Port Authority of Singapore (MPA), is characterised by a comprehensive bunkering regulatory regime that covers the entire bunker supply chain to safeguard buyers and sellers in terms of bunker quality and quantity.

## **<u>Geographic market definition</u>**

(i) Supply of marine fuel oil

<u>Parties' submission</u>

38. The Parties submit that the relevant geographic market for the supply of marine fuel oil is the worldwide market.

<u>CCS' assessment</u>

39. CCS notes that Singapore is one of the top 10 oil importing countries in the world.[23] Besides, CCS' investigations revealed that while Middle East is Singapore's main source of oil supply, there are other sources of supply such as USA, India, Europe and Russia. Glencore does not carry out any refining work, only undertaking import and export of marine fuel oil. There are only 3 oil

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[21] Paragraph 3.2.15 of the Form M1 submitted on 11 January 2010.
[22] Article written by Chief Executive of Hong Lam Marine in "*The Business Times*" on 06 January 2010.
[23] http://import-export.suite101.com/article.cfm/countries_dependent_on_oil_imports.

refineries in Singapore (ExxonMobil and Singapore Refining Company ("SRC") refineries on Jurong island and Shell's refinery on Pulau Bukom).

40. CCS thus agrees that the geographical scope of the marine fuel market is worldwide.

(ii) Bunkering services

Parties' submission

41. The Parties submit that the geographic scope of the market for the provision of bunkering services is the Singapore-Malaysia market. The Singapore port faces rivalry in transhipment business from the neighbouring port at Tanjung Pelepas, Malaysia, which is about one kilometre outside of Singapore. The Parties added that [✂].[24]

42. Besides, suppliers of bunkering services or customers in Singapore may [✂].

CCS' assessment

43. CCS' investigations revealed that some Singapore firms have conducted bunkering activities at Tanjung Pelepas which is regulated by the Johor Port Authority. However, there are other transhipment ports that also compete with Singapore such as Shanghai, Hong Kong and Busan.

44. CCS' investigations also indicated that bunkering activities have also been conducted outside port limits ("OPL") (meaning outside the boundaries of Singapore) over which the Maritime and Port Authority of Singapore (MPA) has no jurisdiction. The possible reasons for ships choosing to receive bunkers outside of port limits are as follows:

a) it is cheaper;

b) less compliance is needed; and

c) it could possibly be due to tight schedules of ships on certain trade routes.

45. The market inquiries also revealed that the choice of transhipment centre depends on cost and trading pattern considerations. In addition, third party feedback indicated that if the merged entity raises the prices of their bunkering services, there would be no shortage of alternative bunker suppliers in Singapore. Through feedback gathered among third parties, CCS notes that even though Tanjung Pelepas port does provide bunkering services, there are plenty of alternative suppliers based in Singapore. Based on these findings, CCS considers the geographic market for bunkering activities to be constrained to Singapore.

[24] [✂].

## VII. MARKET STRUCTURE

### Market share and market concentration

46. According to reports furnished by the parties, their Singapore market shares in Singapore for marine fuel oil products are as follows:

**Table 1: Estimated market shares for supply of marine fuel 2008**

| Marine Fuel Supply | Sales Value | |
|---|---|---|
| | Singapore | Global |
| Glencore | [0–10]% | [0–10]% |
| Chemoil | [10–20]% | [0–10]% |
| Glencore+Chemoil | [10–20]% | [0–10]% |
| BP | [10–20]% | [0–10]-[10-20]% |
| ExxonMobil Asia Pacific Pte Ltd | [5-15]% | - |
| Shell | - | [0-10]-[10-20]% |
| Equatorial Marine Fuel Management Service | [0-10]% | |
| ExxonMobil Asia Pacific Pte Ltd | | [0-10]-[10-20]% |
| CR3 | [30-40]% | [10-20]-[25-35]% |

Source: Merger parties' estimates and Bunkerworld 2008 industry report

47. In the supply of marine fuel market, where the geographical scope of the market fuel market is worldwide the estimated market share of the combined entity will be [0-10]% while the estimated CR3 ratio will be [10-20]-[25-35]%. These figures fall below the indicative thresholds stated in the CCS Guidelines on Substantive Assessment of Mergers ("CCS Guidelines").

**Table 2: Estimated market shares for provision of bunkering services 2008**

| Bunkering services | Sales Value |
|---|---|
| | Singapore |
| Glencore | [0-10]% |
| Chemoil | [0-10]-[10-20]% |
| Glencore+Chemoil | [0-10]-[10-20]% |
| BP Singapore Pte Ltd | [10-20]% |
| ExxonMobil Asia Pacific Pte Ltd | [5-15]% |
| Equatorial Marine Fuel Management Service | [0-10]% |
| CR3 | [20-30]-[30-40]% |

Source: Merger parties' estimates and Bunkerworld 2008 industry report

48. The parties overlap in the bunkering services market, but the overlap is only to a minor extent on the Singapore market, in which their combined market share is [0-10]-[10-20]%. The parties used bunker fuel volumes provided in Singapore that are used or could potentially be used in the provision of bunkering services as proxy for total bunkering services provided in Singapore.

49. Based on the parties' estimate, the CR3 ratio is [20-30]% or [30-40]% where the lower figure is based on actual bunker fuel volume usage whilst the last figure is based on potential bunker fuel volume. However, the actual market shares of the merged entity in the provision of bunkering services will be lower due to the fact that a portion of the supply of marine fuel where Glencore and

Chemoil have previously supplied to each other globally and in Singapore will become captive, i.e. the supply of marine fuel will be absorbed internally to some extent by the merged entity.

50. As mentioned in CCS' Guidelines, CCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless:

- the merged entity has a market share of 40% or more; or
- (where the merged entity has a market share of between 20% to 40%) the post-merger CR3[25] is 70% or more.

51. The post-merger CR3 is below the indicative threshold. As shown in both tables, the estimated market shares of the merged entity in both relevant markets fall well below the indicative thresholds. Besides, the actual market share of the merged entity in the bunkering services market will be lower (as explained in paragraph 49. Moreover, the Parties based their estimates on the total bunker fuel volumes provided in the Bunkerworld 2008 industry report and third party feedback consistently indicated that the merged entity would not have market impact. As such the merged entity is unlikely to have market power after the Transaction. However, CCS also examines these markets based on other considerations (see paragraphs 52 to 58 below).

**Barriers to Entry and Expansion**

52. With regard to the marine fuel oil market, the Parties submit that there are no exorbitant sunk costs in supplying marine fuel as there is no requirement for any infrastructural investment.[26] Some marine fuel oil suppliers trade or supply without owning any storage facilities or bunker barges; in other words they lease the facilities and barges.

53. As for the bunkering services market, the Parties also submit that it is relatively easy for producers of marine fuel and providers of other marine-related support service to switch to the provision of bunkering services.[27] The Parties cited [✂].

54. An independent source also indicated that there were several new entrants and firms who surrendered the Bunkering Licences in the Year 2008/2009 in the Port of Singapore.

55. In addition, regulatory approval in Singapore in the form of accreditation by the MPA is not prohibitively restrictive. According to MPA, under this regulatory regime, all bunker suppliers have to adhere to an accreditation scheme[28], and this

[25] The CR3 refers to the concentration ratio arrived at by combining the market shares of the three largest firms in the relevant market.
[26] Part 2B, paragraph 6.1.22 of the Form M1 submitted on 11 January 2010.
[27] Paragraph 6.1.23 of the Form M1 submitted on 11 January 2010.
[28] To be accredited by the Maritime and Port Authority of Singapore, bunker suppliers need to have a paid-up capital of S$200,000 and the need to enforce a Bunker Supply Chain Management System (which includes the SS 524: 2006 Quality Management for Bunker Supply Chain and SS CP 600: 2008 Code of

assures ship owners of the reliability of the quality and quantity of bunkers supplied in Singapore. There is no licensing requirement for ex-wharf sales, i.e. cargo sales.

56. CCS also notes that under the Marine Fuel Trader (MFT) scheme, an approved MFT purchases marine fuel oil from local GST-registered supplier without having to pay the Goods and Services Tax ("GST"). This would save the hassle of paying GST upfront and then be refunded in the form of a claim-back from the Inland Revenue Authority of Singapore (IRAS).[29]

**Countervailing buyer power**

57. CCS received feedback that the big oil majors and large customers (shipping lines) dictate the prices of marine fuel oil and bunkering prices and that customers are generally price sensitive. CCS also received feedback that bunkering services prices are based on market pricing. In other words, bunkering services rates are negotiated between buyer and seller directly or through traders/brokers.

58. CCS received mixed responses that the ability to influence any price increase in marine fuel products and/or bunkering services can be the suppliers of marine fuel oil, the providers of bunkering services as well as the customers. In addition, customers have choices between multiple suppliers within and beyond Singapore. There is also feedback that customers can easily switch to alternative suppliers in the relevant markets.

## VIII. COMPETITION ASSESSMENT

**Non-coordinated effects**

59. Post-transaction, CCS considers that non-coordinated effects are unlikely to emerge in the following relevant markets:

- the market for the supply of marine fuel oil (bunker oil); and
- the market for bunkering services.

60. In the marine fuel market, the Transaction is seen as not giving rise to non-coordinated effects for the following reasons as outlined above, namely that:

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Practice for Bunkering) to cover the entire process of bunker supply from product procurement to bunker delivery.

[29] The Approved Marine Fuel Trader (MFT) Scheme was introduced by the Minister for Finance to relieve GST on local purchases of certain specified goods, which will be exported. This scheme applies to qualifying businesses in the bunkering industry from 1 January 2005. Under the Scheme, GST on the sale of approved marine fuel oil to Approved MFT businesses need not be charged. However, the import of marine fuel oil would still be liable to GST unless the importer is an approved business under the Major Exporter Scheme (MES).

a) Post-merger markets shares do not exceed the CCS indicative threshold of 40% in the relevant markets;

b) The marine fuel market is highly competitive and fragmented with numerous competitors; and

c) There are low sunk costs where no huge initial investments are needed to enter the market.

61. For the same reasons as outlined in paragraph 60 above, in relation to the bunkering services market, CCS is also of the view that non-coordinated effects are unlikely to arise in this market because"

a) The bunkering services market is also highly competitive where prices are based on market forces;

c) There are relatively low barriers to entry which have witnessed the entry of five players and exit of four players in the market for the year 2008/09. Even the accreditation system is not meant to deter entrants and the MFT scheme is an incentive scheme for bunkering suppliers.

d) The presence of buyer power in the provision of bunkering services with regard to the large shipping lines which are cost sensitive. CCS receives feedback that bunker suppliers do not just compete on prices. There are other factors that influence the choice of the bunker supplier to use, such as long term contract, cross-selling services which help the consumers in making their decision. There was feedback that there have been cases where consumers are willing to buy from more expensive suppliers due to reputation or better credit terms provided by the bunker suppliers

**Coordinated effects**

62. As noted above, CCS' indicative thresholds have not been crossed and along with the highly competitive nature of the marine fuel market and the market for bunkering services, CCS is of the view the Transaction will not lead to a significant change to the existing structure of the relevant market. The relevant markets are fragmented with numerous competitors, both local and foreign, who compete on price, quality, range of services and service standards. Hence, post-transaction, the new entity will continue to face numerous competitors. According to an independent source, Glencore and Chemoil are considered to be among the top 20 bunkering suppliers (by volume) but the new entity would not be considered as one of the top three bunker suppliers, even after consolidation, given the total bunker volume delivered in the Port of Singapore for 2009.

63. Besides, any risks of coordinated behaviour are largely mitigated by the

relatively low barriers to entry and the presence of countervailing buyer power, as discussed above. In addition, the feedback received generally indicated that the marine fuel oil products are generally commoditised products. The Parties have also claimed that other competitors have significant competitive advantages [✂]. Feedback received by CCS generally supported this claim. This too would also contribute to destabilizing any possible coordinated behaviour.

**Vertical aspects**

64. The Parties through the merged entity have a market share that is below the 40% threshold on the markets for (i) supply of marine fuel oil and (ii) bunkering services at global and Singapore level respectively. Given that neither of the Parties appears to have market power in any of the markets in (i) and (ii), it is unlikely that the merged entity will be able to substantially foreclose competition in either the upstream supply or downstream consumption of marine fuel. Besides, the feedback indicated that there are still many competitors (including the oil majors) in the upstream supply of marine fuel oil market.

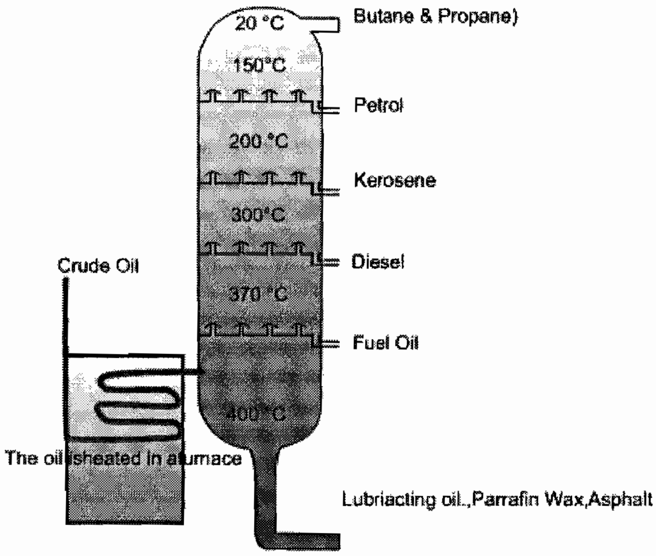
65. Therefore, the Transaction does not give rise to any competition concerns with respect to the vertical relationships between Glencore and Chemoil.

## IX. CONCLUSION

66. Based on the information available to CCS, and for the reasons stated above, CCS has assessed that the Transaction, if carried into effect, will not infringe the section 54 prohibition.

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

Teo Eng Cheong
Chief Executive
Competition Commission of Singapore




Crude oil distillation

Source: Page 32 of the Form M1 submitted by the Parties on 11 January 2010.