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

Grounds of Decision issued by the Competition Commission of Singapore

In relation to the notification for decision of the acquisition by Oiltanking GmbH of Chemoil Storage Limited pursuant to section 57 of the Competition Act

14 December 2012

Case number: CCS 400/007/12

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 [X]

TABLE OF CONTENTS

I.	Introduction.....	3
II.	The Parties.....	3
III.	The Proposed Transaction	5
IV.	Competition Issues.....	6
V.	Relevant Markets.....	7
VI.	Competition Assessment	9
VII.	Efficiencies.....	16
VIII.	Conclusion	16

I. Introduction

1. On 7 November 2012, Oiltanking GmbH (“Oiltanking”) and Chemoil Storage Limited (“Chemoil”) (collectively, “the Parties”) filed a joint notification pursuant to section 57 of the Competition Act (the “Act”), applying for a decision by the Competition Commission of Singapore (“CCS”) as to whether the acquisition by Oiltanking of Chemoil through the acquisition of 100% of the ordinary share capital in Chemoil (the “Proposed Transaction”), will infringe the section 54 prohibition of the Act, if carried into effect.
2. CCS received submissions of further information by the Parties on 20 November 2012, 27 November 2012 and 28 November 2012. CCS also consulted customers and competitors to seek their views on the likely impact of the Proposed Transaction on competition.
3. CCS contacted six competitors and seven customers¹ of the Parties, and sent them questionnaires focusing on the Parties’ dealings with respect to the supply of fuel oil storage. CCS received 11 responses. One respondent did not provide specific responses but indicated that it had no objections to the Proposed Transaction.² The other respondents did not raise objections to the Proposed Transaction as well.
4. The Parties have informed CCS that the Proposed Transaction is not subject to the merger filing requirements of any foreign authority and no other competition agencies have been, or will be, notified.
5. At the end of the consultation process and after evaluating all the evidence, CCS has concluded that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

II. The Parties

Oiltanking

6. Oiltanking is wholly-owned by Marquard & Bahls AG (“M&B”), a privately-held German Aktiengesellschaft (i.e. joint-stock corporation). M&B’s core businesses are oil trading and tank-terminal storage. Through its wholly-owned subsidiary Mabanft GmbH & Co. KG (“Mabanft”), M&B

¹ The Parties only have four direct customers of fuel oil storage. As the storage for one of the customers of Chemoil is sublet to three other customers, CCS also sent questionnaires to the sublet customers.

² The respondent was [REDACTED].

trades petroleum products in several regions worldwide. The activities are diversified and encompass wholesale, as well as service stations, retail business, lubricants, and bunker services. Bunker services, which are provided through Mabanaf's subsidiaries Matrix, Bomin Deutschland GmbH & Co. KG, and further subsidiaries, are primarily concentrated in Singapore, India (Mumbai, Kochi), the United States (Houston), and Oman (Port of Sohar).³

7. Oiltanking owns 73 tank terminals in 22 countries worldwide, with a total storage capacity of 19.7 million cbm⁴. Oiltanking offers storage services for petroleum products, vegetable oils, chemicals and other liquids.⁵ Oiltanking's subsidiaries registered in Singapore are Oiltanking Asia Pacific Pte Ltd ("OTAP"), Oiltanking Odfjell Terminal Singapore Pte Ltd ("OOTS"), Oiltanking Singapore Limited ("OTS"), Pipe Rack Holding Company Private Limited ("PRHC") and OTI Terminal Pte Ltd (in liquidation).⁶
8. OTS and OOTS each own and operate a tank storage terminal in Singapore. OTAP is a service entity which provides services such as business development, general management, finance and accounting, engineering and IT for OTS, OOTS and other terminals in Asia.⁷
9. Oiltanking provides bulk liquid storage services in facilities that offer optimal versatility and scalability to customers in Singapore. Oiltanking also provides blending services. Blending of different types of oils and additives allows for the creation of oil products of different qualities which match certain specifications. Blending is considered a supplemental service to storage.⁸ Blended fuel oil is a mixture of petroleum residual and distillate fuel oils.⁹
10. The total (group) worldwide turnover for Oiltanking in the financial year ending 31 December 2011 was [X].¹⁰ The total (group) Singapore turnover for Oiltanking in the financial year ending 31 December 2011 was [X], which comprises of the turnover achieved by OOTS and OTS.¹¹

³ Paragraphs 7.1 and 7.2 of Form M1.

⁴ "cbm" is an abbreviation for cubic metres

⁵ Paragraph 10.5 of Form M1.

⁶ Paragraph 10.1 of Form M1.

⁷ Paragraphs 10.7 and 10.8 of Form M1.

⁸ Paragraph 14.1 of Form M1.

⁹ Paragraph 19.3 of Form M1.

¹⁰ Paragraph 13.3 of Form M1 and paragraph 1.1 of the Parties' submission dated 20 November 2012.

¹¹ Paragraph 13.5 of Form M1.

Chemoil

11. Chemoil is a wholly-owned subsidiary of Chemoil Logistics Inc. (“Chemoil Logistics”), a company incorporated in the Marshall Islands. Chemoil Logistics is a wholly-owned subsidiary of Chemoil Energy Limited, an oil trading company incorporated in Hong Kong and listed on the Main Board of Singapore Exchange Securities Trading Limited. Chemoil Energy Limited is the ultimate parent company of the Chemoil group of companies.¹²
12. Chemoil Energy Limited is a supplier of marine fuel and has integrated operations in Los Angeles, New York, Houston, Singapore, Panama, United Arab Emirates and the ARA region (Antwerp, Rotterdam and Amsterdam). It has bunker trading and brokering capabilities in multiple ports around the world. Chemoil Energy Limited has also diversified itself into supplying aviation fuel, diesel, renewable and biofuels, base oils and lubricants.¹³
13. Chemoil has a wholly-owned subsidiary registered in Singapore – Helios Terminal Corporation Pte Ltd (“Helios”).¹⁴ Helios is a purpose-built fuel oil storage and blending facility.¹⁵
14. The turnover of Chemoil in the financial year ending 31 December 2011 was [X], which was achieved entirely in Singapore.¹⁶

III. The Proposed Transaction

15. The Proposed Transaction involves Oiltanking acquiring 100% of all the issued share capital of Chemoil, pursuant to the Share Sale Agreement dated 9 October 2012 between Oiltanking and Chemoil Logistics. The Proposed Transaction involves Oiltanking acquiring Chemoil and its entire business as a going concern.¹⁷ The aggregate consideration for the Proposed Transaction is US\$285,000,000 (S\$352,117,500).¹⁸
16. The Parties have submitted that the Proposed Transaction will enable Oiltanking to expand its business in the area of fuel oil storage in Singapore. Singapore is one of the largest fuel oil consumers in the world and bunker fuel represents over 90% of Singapore’s total fuel oil consumption. There is,

¹² Paragraph 7.8 of Form M1.

¹³ Paragraph 10.6 of Form M1.

¹⁴ Paragraph 10.2 of Form M1.

¹⁵ Paragraph 15.1 of Form M1.

¹⁶ Paragraph 13.4 of Form M1.

¹⁷ Paragraphs 11.3 and 11.4 of Form M1.

¹⁸ Paragraph 11.5 of Form M1.

accordingly, strong demand for fuel oil storage and blending services in Singapore. Increased bunkering activity is expected to be the key driver of fuel oil imports in Singapore, as bunker consumption in Singapore is expected to increase in step with the increased shipping traffic driven by globalisation. Based on Oiltanking's market assessment, [X].¹⁹

17. Although Oiltanking already operates two terminals in Singapore with a combined storage capacity of more than 1.7 million cbm, its fuel oil capacity portfolio is under-represented; only 200,000 cbm is available for fuel oil storage. The Proposed Transaction and the acquisition of the Helios Terminal will strengthen Oiltanking's representation for fuel oil and bunker products in Singapore, making Oiltanking's product portfolio more balanced.²⁰
18. The Proposed Transaction will, on the other hand, enable Chemoil Energy Limited to re-deploy investments in Chemoil to its other group of companies where Chemoil Energy Limited believes it can generate greater long term returns and thereby enhance shareholder value.²¹
19. Based on the Parties' submission that this Proposed Transaction is an acquisition of sole control, this Proposed Transaction constitutes a merger pursuant to section 54(2)(b) of the Act.²²

IV. Competition Issues

20. The Parties submitted that there may be overlap between Oiltanking and Chemoil in Singapore for the supply of fuel oil storage, including blending services (the "Overlapping Service"). Oiltanking's turnover in respect of the Overlapping Service for the financial year ending 31 December 2011 was [X]. Chemoil's turnover in respect of the Overlapping Service, which represents [X]% of Chemoil's turnover, for the financial year ending 31 December 2011 was [X].²³
21. The Parties submitted that the Proposed Transaction will not result in a substantial lessening of competition because of factors including: (i) no significant increase in concentration or changes to the structure of the market, (ii) the ability of customers to easily switch between suppliers, (iii) the

¹⁹ Paragraph 12.1 of Form M1. [X].

²⁰ Paragraph 12.2 of Form M1.

²¹ Paragraphs 12.1, 12.2, 12.3 and 12.4 of Form M1.

²² Section 54(2)(b) provides that a merger occurs if one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings.

²³ Paragraphs 16.1 and 16.2 of Form M1.

multitude and competitive strengths of viable alternative suppliers, and (iv) presence of large customers and the significant countervailing buyer power which may be exercised by such customers.²⁴

22. In evaluating the potential impact of the Proposed Transaction, CCS has considered whether the Proposed Transaction will lead to coordinated and non-coordinated effects that would substantially lessen competition within any market in Singapore.

V. Relevant Markets

(a) Product Market

23. The fuel oil supply chain comprises of:²⁵
- (i) exploration and extraction of crude oil;
 - (ii) transportation of crude oil to a refinery (e.g. via tanker, pipeline or rail);
 - (iii) refining of crude oil to produce light distillates (i.e. liquefied petroleum gas, gasoline, naphtha), middle distillates (i.e. kerosene, diesel), heavy distillates and residuum (i.e. heavy fuel oil, lubricating oils, wax, asphalt);
 - (iv) transportation of fuel oil to a storage terminal;
 - (v) storage of fuel oil (including blending services to obtain desired or required specifications with respect to, for example, viscosity or sulphur content); and
 - (vi) distribution of fuel oil to ships (i.e. bunkering), for example, via specialised vessels.
24. An oil storage tank is an artificial reservoir for the storage of oil or petroleum products from which these products are usually transported to end users or further storage facilities. Oil storage tanks may consist of either above ground or underground tanks as well as gantries for the discharge of products into road tankers or other vehicles (such as barges) or pipelines. Most oil depots (oil storage terminals) have road tankers operating from their grounds and these vehicles transport products to petrol stations or other users. Oil depots are usually situated close to oil refineries or in locations where marine tankers containing products can discharge their cargo.²⁶

²⁴ Paragraphs 34.9 and 35.6 of Form M1.

²⁵ Paragraph 18.1 of Form M1.

²⁶ Paragraph 19.2 of Form M1.

25. The fuel oil products stored are mainly supplied to bunkering companies. However, the customers for fuel oil storage and blending services include oil companies, refiners and traders in petroleum products.²⁷
26. The Parties submitted that the relevant product market, at the narrowest, should be the market for fuel oil storage. Fuel oil, which is considered a “dirty” petroleum product, requires different storage conditions compared to other oil products. Fuel oil tanks also require a shorter fire safety distance between tanks than those for clean products.²⁸ Although the Parties submitted that suppliers are able to switch from storing other products to fuel oil with relative ease²⁹, competitor and customer responses suggest that costs can vary, efficiency may decrease, opportunity costs could be high and typically fuel oil storage is considered to be a separate market from storage for other products.³⁰ The difficulties of converting fuel oil storage to other product storage would be greater than converting other product storage to fuel oil storage due to the higher safety and cleanliness requirements of other products. CCS agrees that the provision of fuel oil storage is the relevant overlapping product.
27. CCS also considered if fuel oil storage should be further segmented into land-based storage and floating storage.³¹ Competitor and customer responses suggest that floating storage could potentially be a substitute for land-based storage.³² However, information from a third-party source³³ indicates that the floating storage capacity available in Singapore is fluid and uncertain since the vessels can be redeployed to transport cargo, and hence may not be a reliable substitute to land-based storage. In any case, CCS has not found a substantial lessening of competition by considering only land-based storage in the first instance.

(b) Geographic Market

28. The Parties submitted that the relevant geographic market should, at the narrowest, be defined as Singapore.³⁴ In general, fuel oil distributors operate locally within a certain port area and accordingly prefer terminals which are located within or near the port. As Singapore is a large trading and bunkering

²⁷ Paragraph 19.5 of Form M1.

²⁸ Paragraph 10.4 of the Parties’ submission dated 20 November 2012.

²⁹ Paragraph 19.16 of Form M1.

³⁰ Competitor responses from [REDACTED] and customer responses from [REDACTED].

³¹ Floating storage is typically the use of sea vessels as storage facilities. They tend to be located at the boundary of or just outside Singapore waters.

³² Customer responses from [REDACTED], and competitor responses from [REDACTED].

³³ [REDACTED].

³⁴ Paragraph 20.1 of Form M1.

hub, customers are interested in storage in Singapore.³⁵ Responses from customers indicate that procurement occurs in Singapore³⁶, although there were some suggestions that nearby storage facilities in Malaysia could be a substitute. However, CCS notes that some customers indicated that using storage facilities in Malaysia currently would be inconvenient and would cost more overall.³⁷ A third-party source³⁸ indicated that there could also be hidden fees and differences in efficiencies. In any case, CCS has not found a substantial lessening of competition by considering only Singapore to be the relevant geographic market in the first instance.

VI. Competition Assessment

(a) Market Shares and Concentration

29. The Parties submitted that the estimated 2011 market shares by value and volume³⁹ in the fuel oil storage market in Singapore are as follow:

Table 1: Estimated 2011 Market Shares in Fuel Oil Storage in Singapore

Firm	Market Shares by Value (%)	Market Shares by Volume (%)
Oiltanking	[0-10]	[0-10]
Chemoil	[0-10]	[0-10]
<i>Combined</i>	<i>[10-20]</i>	<i>[10-20]</i>
Universal	[30-40]	[30-40]
Vopak	[20-30]	[20-30]
Horizon	[10-20]	[10-20]
Tankstore	[10-20]	[10-20]
Others	[0-10]	[0-10]
<i>CR3 pre-Transaction</i>	<i>[70-80]</i>	<i>[70-80]</i>
<i>CR3 post-Transaction</i>	<i>[70-80]</i>	<i>[70-80]</i>

30. The Parties have estimated that their combined market shares post-merger by value and volume would be [10-20]% and [10-20]% respectively, with no change to the corresponding CR3 at [70-80]% and [70-80]%. The

³⁵ Paragraph 19.20 of Form M1.

³⁶ Customer responses from [REDACTED].

³⁷ Customer responses from [REDACTED].

³⁸ [REDACTED].

³⁹ Volume is measured by the suppliers' fuel oil storage capacity.

incremental change in market share by value and volume is estimated to be [0-10]% and [0-10]% respectively.

31. CCS was also able to calculate market shares by volume based on data provided by competitors⁴⁰ on the volume of fuel oil storage they supply. Based on CCS' calculations, the combined market share of the Parties in Singapore by volume would be [10-20]%, with CR3 increasing from [70-80]% to [70-80]%. The incremental change to the Parties' market share remains small at [0-10]%.
32. As set out in the CCS Guidelines on the Substantive Assessment of Mergers, CCS is generally of the view that 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 more than 20% with the post-merger CR3 at 70% or more.⁴¹ Regardless of whether the Parties' estimates are used or calculations from competitor responses are used, the post-merger market shares fall below CCS' indicative thresholds.

(b) Barriers to Entry and Expansion

33. The Parties submitted that it is possible for a new entrant to enter the fuel oil storage market in Singapore through acquiring an existing terminal. However building a new terminal is unlikely to be a realistic option due to land scarcity.⁴²
34. There have not been many instances of new players entering or exiting the oil storage industry in Singapore in the past five years. Most of the developments have been concerned with the expansion of existing terminals by existing players.⁴³ These include:
 - (i) the Stolthaven terminal, which is part of the Stolt-Nielsen group, was expanded in 2010;⁴⁴
 - (ii) the Universal terminal which was built by Hin Leong in October 2007 and marks Hin Leong's entry into the Singapore market for oil storage;⁴⁵ and

⁴⁰ The data used was from [3<].

⁴¹ Paragraph 5.15 of *CCS Guidelines on the Substantive Assessment of Mergers*. CR3 refers to the combined market shares of the three largest firms.

⁴² Paragraph 26.1 of Form M1.

⁴³ These include expansions to store other products, not just fuel oil.

⁴⁴ Paragraph 29.2.1 of Form M1.

⁴⁵ Paragraph 29.2.3 of Form M1.

- (iii) Vopak extending its storage space at its Banyan terminal in 2007, 2008 and 2009 by increasing its capacity by 165,000 cbm, 320,000 cbm and 397,000 cbm respectively, and Penjuru terminal in 2008 by increasing its capacity by 171,000 cbm.⁴⁶
35. The Parties submitted that for a new entry to gain 5% of the market share, approximately [§<] worth of capital investment is required.⁴⁷ Competitor responses indicate that any new entrant would require approximately two years⁴⁸ before it can commence operations.
36. Competitor responses have also indicated that it is unlikely that a new entrant would be able to build new facilities to start up its operations in Singapore, given the scarcity of land here. Furthermore, CCS understands from competitor responses that the current fuel oil storage utilisation rate is high – estimates range from [§<].⁴⁹ The scope for expansion by building new facilities or increasing the utilization of current capacity is therefore limited.
37. However, it is possible for current oil storage providers to convert clean product tanks to fuel oil storage by cleaning the tanks as well as carrying out some modifications.⁵⁰ Oiltanking estimates that the costs involved for the conversion of a tank with capacity of 5,000 to 20,000 cbm would be between [§<].⁵¹ Competitor responses suggest that such costs can vary, the efficiency may decrease and the opportunity costs could be high.⁵² CCS notes that Oiltanking has, in fact, carried out this conversion by providing some chemical tanks for storing fuel oil. However, it is only able to provide them at chemical storage rates, which are significantly higher than fuel oil storage rates⁵³, suggesting that this alternative is unlikely to provide a significant competitive constraint due to the substantially higher cost incurred by customers.
38. As noted earlier at [28], CCS has considered the option that fuel oil storage facilities in Malaysia, located in Tanjung Bin and Tanjung Langsat⁵⁴, could act as alternative fuel oil storage for customers. For example, one of

⁴⁶ Paragraph 29.2.4 of Form M1.

⁴⁷ Paragraph 26.2 of Form M1. Due to difficulties in building a new facility arising from land scarcity, the Parties have used the cost of acquiring an existing facility as a proxy for the cost to gain 5% market share as a new entrant.

⁴⁸ Competitor responses from [§<]

⁴⁹ Competitor responses from [§<]

⁵⁰ Paragraph 10 of the Parties' submission on 20 November 2012 and competitor responses from [§<]

⁵¹ Paragraph 5.2 of Parties' submission dated 27 November 2012.

⁵² Competitor responses from [§<]

⁵³ Paragraphs 2.1.2 and 2.1.3 of the Parties' submission dated 27 November 2012.

⁵⁴ Competitor responses from [§<]

Oil tanking's customers has entered into a joint venture to build a world-class storage terminal with the capacity of 840,000 cbm in Tanjung Bin, Johor, Malaysia, since 2011. The terminal is expected to be completed in 2012 or 2013.⁵⁵ However, CCS is aware that the feasibility of storing fuel oil overseas has to be measured against the increased operating cost incurred by storing fuel oil at a location which is further from the bunkering or trading location. Customer responses⁵⁶ and information from a third-party source⁵⁷ suggest that currently this is an inconvenient and costly option. In the long-term though, due to land scarcity in Singapore, customers could potentially seek to expand procurement or even sponsor entry in nearby locations outside of Singapore.

39. CCS also understands that a Very Large Floating Structure ("VLFS") in Pulau Sebarok, Singapore, that will be ready by 2015, can store up to 300,000 cbm of oil.⁵⁸ Additionally, CCS understands that the Jurong Rock Cavern ("JRC"), an underground liquid hydrocarbon storage facility, which is under construction, will have storage capacity of 1.47 million cbm by the completion of Phase 1 of its construction.⁵⁹ However, there is uncertainty on the capacity of fuel oil that could be stored in both facilities.⁶⁰ In the short term, therefore, the VLFS and the JRC are unlikely to ease capacity pressures.
40. CCS understands that generally the demand for fuel oil storage is strong⁶¹. However one of the challenges for entry or expansion would be the lack of available land. Information from third parties corroborates the view that merger and acquisition will be the most likely channel through which players can expand their capacity within Singapore.⁶² CCS is therefore of the view that the lack of available land for fuel oil storage coupled with high capacity utilisation acts as a considerable barrier of entry and expansion, at least in the short term. In the long term, the development of the VLFS may potentially increase capacity for the market and expansions in Malaysia may grow to provide viable substitute capacity in future.

⁵⁵ Paragraph 29.2.2 of Form M1.

⁵⁶ Customer responses from [REDACTED]

⁵⁷ [REDACTED]

⁵⁸ http://www.jtc.gov.sg/Publications/Newsletter/Periscope/2008_04/focus/article03.htm viewed on 26 November 2012.

⁵⁹ Meeting with [REDACTED]

⁶⁰ CCS understands from a meeting with [REDACTED]

⁶¹ Customer responses from [REDACTED] and competitor responses from [REDACTED]

⁶² Customer responses by [REDACTED]

(c) Countervailing Buyer Power

41. The Parties submitted that customers can be broadly grouped into distributors and traders. In general, traders store their products in Oiltanking's facilities via vessels for trading purposes while distributors could be off-taking products from tanks that either they or the producer⁶³ has rented. There are no differences in the fuel oil storage facilities and requirements for use by either distributors or traders.⁶⁴
42. The Parties also submitted that customers are able to easily switch between storage service providers at no additional costs, to the extent that there is available capacity at competing terminals. When switching, customers will load all their products in a terminal and discharge the next shipment to the next terminal of their choice.⁶⁵ There are no dedicated or sunk costs required of the customers.⁶⁶
43. As noted at [36], CCS understands that the current fuel oil storage utilisation rate is high⁶⁷ and the ability of customers to switch suppliers is dependent on the availability of storage space.⁶⁸ CCS further notes that competitor and customer responses indicate that a high proportion⁶⁹ of fuel oil storage space is procured through negotiated contracts.⁷⁰ Although the contractual durations of fuel oil storage leases vary, and durations typically last for three years or more⁷¹, customers are bound to fulfill the duration of their contract or are liable to pay compensation in the event of early termination of contract.⁷² The ability for customers to switch suppliers is therefore limited by the duration of contract undertaken combined with the availability of storage space at the time of switch. Conversely, longer-term contracts also prevent suppliers from increasing prices or reducing capacity in the short term. The current duration of the Parties' contracts with direct⁷³ customers

⁶³ A producer can refer either to a wholesaler or to an upstream crude oil exploration party. Paragraph 21.1 of the Parties' submission dated 20 November 2012.

⁶⁴ Paragraphs 19.23 and 19.24 of Form M1.

⁶⁵ This refers to storage customers removing all the products from a terminal they are exiting, possibly by distributing to their downstream customers. The next time the storage customers have a new shipment of products, they would make use of any new terminal they have chosen.

⁶⁶ Paragraph 32.2 of Form M1.

⁶⁷ Competitor responses from [REDACTED].

⁶⁸ Customer responses from [REDACTED].

⁶⁹ [REDACTED]

⁷⁰ Competitor responses from [REDACTED] and customer responses from [REDACTED]

⁷¹ Paragraphs 28.2 and 28.3 of the Parties' response on 20 November 2012. Competitor responses from [REDACTED].

⁷² Competitor responses from [REDACTED] and customer responses from [REDACTED].

⁷³ Non-sublet customers

are for a period of five years or have just been renewed for three to five-year periods.⁷⁴

44. CCS concludes that although some customers opined that they possess countervailing buyer power⁷⁵, this buyer power is limited by the length of customer's contract and the current high capacity utilisation of the fuel oil storage market. However, the ability of the merged entity to increase prices or reduce capacity is also constrained by the remaining contractual durations of its direct customers, which have three to five years more to run.

(d) Non-coordinated effects

45. Non-coordinated effects may arise where, as a result of the Proposed Transaction, the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities.⁷⁶ Other firms in the market may also find it profitable to raise their prices because the higher prices of the merged entity's product will cause some customers to switch to rival products, thereby increasing demand for the rivals' products.
46. The Parties submitted that the merged entity will continue to be constrained, post-acquisition, by competitors. Oiltanking's oil storage facilities will still not be the largest in Singapore.⁷⁷ The Parties further submitted that non-coordinated effects will not arise in view of the multitude and competitive strengths of viable alternative suppliers and the ability of customers to easily switch between suppliers.⁷⁸ However, as noted in the preceding section at [43], CCS finds that the current high capacity utilisation and use of long-term contracts would limit the customers' ability to switch suppliers.
47. As mentioned above under the section on market shares and concentration, the estimated combined market shares of the Parties by value and volume are [10-20]% and [10-20]% respectively, with an incremental market share by value and volume of [0-10]% and [0-10]% respectively post merger; CCS' calculations indicate combined market shares by volume of [10-20]% and incremental market share of [0-10]%. Even taking the higher figures from CCS' calculation, CCS notes that the incremental market share is low and any market power that the Parties hold is unlikely to result from the Transaction. As a comparison, CCS' calculations indicate that the top player

⁷⁴ The Parties' submission dated 28 November 2012 and paragraph 4.1.10 of the Share Sale Agreement.

⁷⁵ Customer responses from [REDACTED].

⁷⁶ Paragraph 6.3 of *CCS Guidelines on the Substantive Assessment of Mergers*.

⁷⁷ Paragraph 34.1 of Form M1.

⁷⁸ Paragraphs 34.9.2 and 34.9.3 of Form M1.

would hold a market share by volume of [30-40]% with the second to fifth players' (including the merged entity) market shares ranging between [10-20]% and [10-20]%.

48. Overall, although the barriers to entry and expansion are high, the significant market shares of competitors coupled with the low incremental market share arising from the acquisition suggest that uncoordinated effects arising from the acquisition are unlikely to be significant. Moreover, given the length of remaining contractual durations with the Parties' customers, the merged entity is unlikely to be able to exercise market power arising from the acquisition in the short term. In the long term, with potential expansions in Malaysia and through the VLFS, capacity expansions may be possible. On balance, therefore, non-coordinated effects are unlikely to be significant.

(e) Coordinated effects

49. A merger may also lessen competition substantially by increasing the possibility that, post-merger, firms in the same market may coordinate their behaviour to raise prices, or reduce quality or output. Given certain market conditions, and without any express agreement, tacit collusion may arise merely from an understanding that it will be in the firms' mutual interests to coordinate their decisions. Coordinated effects may also arise where a merger reduces competitive constraints in a market, thus increasing the probability that competitors will collude or strengthen a tendency to do so.⁷⁹
50. As indicated in the section on market shares and concentration, the combined market shares of the Parties is estimated to be below 20%, although CR3 is more than 70%. This would still be below CCS' indicative thresholds, notwithstanding that CR3 is more than 70%. CCS also notes that the increment in CR3 is low, ranging from [0-10]% based on the Parties' estimates to [0-10]% based on CCS' calculations.
51. CCS also notes that customer responses suggest competitors do not solely compete on price, and factors such as location, terminal capability, tank configuration, berth facilities and reputation are also considerations when choosing a supplier.⁸⁰ Differentiation therefore increases the difficulty for competitors to coordinate behavior.

⁷⁹ Paragraph 6.7 of *CCS Guidelines on Substantive Assessment of Mergers*.

⁸⁰ Customer responses from [X].

52. Furthermore, the negotiated contracts between the fuel oil storage providers and customers, which account for a high proportion⁸¹ of fuel oil storage procured⁸², are of varying duration, as well as fees and terms. This reduces the transparency of fuel oil storage prices charged by the various suppliers and also increases the difficulty for coordination due to differing expiry periods. Coupled with the fact that prices are non-negotiable during the duration of contract, the ability of market players to coordinate prices will be weakened. On balance, while the barriers to entry and expansion are high, differentiation between competitors and the extensive use of negotiated contracts with varying terms would likely limit coordinated effects post-merger.

VII. Efficiencies

53. The Parties submitted that the Proposed Transaction will lead to greater efficiency in Singapore. There are currently six major independent tank terminal operators in Singapore storing oil products (i.e. Tankstore, Chemoil, Universal, Horizon, Vopak and Oiltanking). Of these, Chemoil is the smallest of the terminals. The expertise, good track record and global reach of Oiltanking will ensure an even higher minimum standard in terms of oil storage. Oiltanking's commitment in ensuring safety above all else, as well as its flexibility in ensuring the highest level of professionalism means that all care will be taken into account to ensure a smooth and seamless transfer. In addition, as one of the more experienced tank operators in Singapore, Oiltanking will be able to transplant the knowledge acquired to ensure the same degree of professionalism and efficiency for the Helios terminal.⁸³
54. CCS is unable to comment on these claims as the Parties did not submit evidence of these efficiencies. In any event, the issue of efficiencies does not arise, as CCS has not found a substantial lessening of competition in the first instance.

VIII. Conclusion

55. For the reasons above and based on the information available, CCS assesses that the Proposed Transaction, if carried into effect, would not give rise to a substantial lessening of competition in any market in Singapore, and

⁸¹ [X]

⁸² Competitor responses from [X] and customer responses from [X]

⁸³ Paragraph 42.1 of Form M1.

accordingly would 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