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**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 proposed acquisition by SIF Group Pte Ltd of Penguin Ferry Services Pte Ltd pursuant to section 57 of the Competition Act**

**6 June 2011**

**Case number: CCS 400/002/11**

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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 [X]

**I. Introduction**

The notification

1. On 20 April 2011, Penguin Ferry Services Pte Ltd (“Penguin”) and SIF Group Pte Ltd (“SIF”) (collectively the “Parties”), filed a joint notification pursuant to section 57 of the Competition Act (the “Act”), for a decision by the Competition Commission of Singapore (“CCS”) as to whether the proposed acquisition, by SIF of all the issued share capital in Penguin (the “Transaction”), would infringe the section 54 prohibition of the Act.

2. CCS has concluded that the Transaction, if carried into effect, will not infringe section 54 of the Competition Act (Cap. 50B) (the “Act”).

## II. The Parties

### SIF

3. SIF is a limited exempt private company incorporated in Singapore on 1 December 2010<sup>1</sup> and to date, does not carry on any business<sup>2</sup>. The Parties submitted that SIF has not had any turnover worldwide or in Singapore since its incorporation<sup>3</sup>.

### Penguin

4. Penguin is a limited private company incorporated in Singapore on 18 May 1999 and is a wholly owned subsidiary of Penguin International Limited<sup>4</sup>.

5. Penguin is in the business of operating passenger ferry services between Singapore and Indonesia, in particular Batam, Bintan and Karimun<sup>5</sup>. Penguin currently operates passenger ferries on the routes between Singapore – Batam Centre (Batam), Singapore – Sekupang (Batam), Singapore – Tanjung Balai (Karimun) and Singapore – Tanjung Pinang (Bintan)<sup>6</sup>. Penguin is also involved in business of chartering and ship management<sup>7</sup>.

6. The Parties submitted that the Singapore turnover of Penguin for its regional ferry service<sup>8</sup> was [x] in the financial year ended 31 December 2010<sup>9</sup>.

## III. The Transaction

7. The notified Transaction is a cash offer of S\$13,500,000 by SIF to the seller, Penguin International Limited, for all of the issued and paid up share capital in Penguin<sup>10</sup>. The Transaction is conditional upon satisfaction of certain conditions, including the condition that CCS makes a favourable decision pursuant to the Act that the Transaction has not infringed and/or will not, if carried into effect, infringe the section 54 prohibition, without the attachment of any terms or conditions or commitments or remedies<sup>11</sup>.

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<sup>1</sup> Business Profile of SIF Group Pte Ltd dated 26 April 2011 (Accounting and Corporate Regulatory Authority)

<sup>2</sup> Form M1, paragraph 2.2

<sup>3</sup> Form M1, paragraph 3.1

<sup>4</sup> Business Profile of Penguin Ferry Services Pte Ltd dated 26 April 2011 (Accounting and Corporate Regulatory Authority)

<sup>5</sup> Form M1, paragraph 2.2

<sup>6</sup> Form M1, paragraph 6.1

<sup>7</sup> Parties' response dated 13 May 2011 to Request for Additional Information in the Letter from CCS dated 11 May 2011

<sup>8</sup> Between Singapore and Batam, Bintan, Karimun and Tanjung Pengelih. Tanjung Pengelih services were no longer in operation at the end of 2010.

<sup>9</sup> Form M1, paragraph 3.1

<sup>10</sup> Form M1, paragraphs 1.2, 1.3 and 3.1

<sup>11</sup> Form M1, paragraph 3.1

8. It has been contemplated under the Transaction that SIF will not carry on the “Excluded Business<sup>12</sup>” after the completion of the Transaction. The Excluded Business will be transferred out of Penguin either prior to or upon completion of the Transaction<sup>13</sup>. According to the Parties, the Excluded Business was excluded [X]<sup>14</sup>.

9. According to the Parties, SIF believes that entering this market via the Transaction will take less time as compared with entering the market as a new ferry operator. SIF believes that Penguin is a good investment as there is potential growth in the industry and believes it will be able to make Penguin a more competitive and successful ferry operator, leveraging on Penguin’s established ferry ticketing business and customer base<sup>15</sup>.

10. Penguin International Limited wishes to dispose of Penguin as its ferry ticketing business is in a loss making position and that Penguin International Limited plans to focus on its more profitable and core industrial activities, primarily shipbuilding and chartering in the offshore and gas sector. Penguin International Limited plans to use its net proceeds from the Transaction in its shipbuilding and fleet renewal programmes<sup>16</sup>.

11. Based on the Parties’ submission that SIF will acquire all of the issued and paid up share capital of Penguin post-Transaction<sup>17</sup>, the Transaction constitutes a merger pursuant to s 54(2)(b) of the Act<sup>18</sup>.

#### IV. Competition Issues

12. The Parties submitted that the Transaction will not have an impact on any market as there are currently no horizontal or vertical overlaps between SIF’s and Penguin’s businesses<sup>19</sup>. This is supported by the fact that SIF is newly incorporated and does not carry on any business. It has no turnover worldwide or in Singapore since its incorporation.

13. CCS has assessed the submission and also verified whether there are any other overlapping businesses between SIF and Penguin, and is of the view that in light of the fact that the businesses of Penguin and SIF do not overlap, there is no combination

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<sup>12</sup> The Excluded Business is defined under the Sale and Purchase Agreement between SIF and Penguin International Limited as “business (including ship chartering) conducted by Penguin with each of Tian San Shipping Pte Ltd and [X]. These businesses relate to the provision of domestic ferry services (in Singapore). Form M1, paragraph 3.1

<sup>13</sup> [X] Form M1, paragraph 10.1

<sup>14</sup> Form M1, paragraph 10.1

<sup>15</sup> Form M1, paragraph 3.2.

<sup>16</sup> SGX announcement made by Penguin International Limited on 11 March 2011

<sup>17</sup> Form M1, paragraph 1.2

<sup>18</sup> 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.

<sup>19</sup> Form M1, paragraph 3.1

of competing ferry operators resulting from the Transaction, hence no requirement for CCS to consider whether the Transaction would substantially lessen competition in any markets.

## V. The Relevant Markets

### (a) The Parties' submissions

14. The Parties submitted that the relevant market is the market for the provision of passenger ferry services between Singapore and Batam, Indonesia. The Applicants submit that the relevant product market should not be further segmented according to the various destinations on Batam because in respect of demand substitutability<sup>20</sup>, a customer who intends to go to a particular destination on Batam may:

- (a) Take a ferry to the ferry terminal on Batam which is closest to his/her intended destination or
- (b) Take a ferry to a ferry terminal on Batam which is further from his/her intended destination and then taking a taxi to the intended destination.

15. Parties have submitted that they believe that the various ferry terminals on Batam are close enough such that the two options would likely be viewed by customers as reasonably substitutable<sup>21</sup>.

16. In respect of supply-side substitution, the Parties are of the view that in order to switch between providing services on different routes it will require government regulatory requirements, approval and time slots from the Singapore Cruise Centre, certification requirements from MPA and other operations related switching costs<sup>22</sup>. Notwithstanding the factors affecting supply-side substitution, parties have submitted that given the demand side substitutability between the various routes, the relevant market should not be further segmented according to the various destinations on Batam, and the Parties submit that the relevant market is the market for the provision of passenger ferry services between Singapore and Batam.<sup>23</sup>

17. According to the Parties, there are no horizontal or vertical overlaps between SIF's and Penguin's businesses<sup>24</sup>.

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<sup>20</sup> Form M1, Annex A, paragraph 2.1-2.4

<sup>21</sup> Form M1, Annex A, paragraph 2.4

<sup>22</sup> Form M1, Annex A, paragraph 2.8

<sup>23</sup> Form M1, Annex A, paragraph 2.9

<sup>24</sup> Form M1, Annex A, paragraph 3.1

**(b) CCS' assessment***(i) Product market*

18. CCS is of the view that regardless of the definition of the product market, due to the fact that there are no overlapping products and no competing ferry operators combined as a result of the Transaction in any possible product market, there is no need to precisely define the product market.

*(ii) Geographic market*

19. Parties did not make a separate submission in relation to the relevant geographic market. However, CCS is of the view that regardless of the definition of the geographic market, due to the fact that there are no overlapping routes between the Parties and no competing ferry operators combined as a result of the Transaction in any Singapore market, there is no need to precisely define the geographic market.

**VI. Market Structure****(a) Market shares and market concentration**

20. For completeness, CCS has used the information submitted by the Parties and considered the market shares of the passenger ferry service for all the routes currently served by Penguin.

Table 1: Estimated market shares for the total number of tickets sold and utilized for the Singapore to Sekupang Route for Dec 2010<sup>25</sup> (Figures are based on submissions from parties who had obtained them from [redacted]<sup>26</sup>)

	Provision of passenger ferry services for the Singapore to Sekupang Route
	Dec 2010
	% Market Share
Batam Fast	[redacted]%
Penguin	[35-45]%
Pacific	[redacted]%
SIF	[0]%

<sup>25</sup> Data for December 2010 was relied upon as it was the first month of operations for Pacific. There were no trips made by Pacific prior to that.

<sup>26</sup> Parties' response dated 29 Apr 2011 to Request for Additional Information in the Letter from CCS dated 26 April 2011.

Table 2: Estimated market shares for the total number of tickets sold and utilized for the Singapore to Batam Centre Route for 2010 (Figures are based on submissions from parties who had obtained them from [redacted]<sup>27</sup>)

	Provision of passenger ferry services for the Singapore to Batam Centre Route
	2010
	% Market Share
Batam Fast	[redacted]%
Penguin	[40-50]%
SIF	[0]%

Table 3: Estimated market shares for the total number of tickets sold and utilized for the Singapore to Tanjung Pinang Route for 2010 (Figures are based on submissions from parties who had obtained them from Penguin's ticketing agent on Tanjung Pinang<sup>28</sup>)

	Provision of passenger ferry services for the Singapore to Tanjung Pinang Route
	2010
	% Market Share
Penguin	[30-40]%
Falcon	[redacted]%
Berlian	[redacted]%
SIF	[0]%

Table 4: Estimated market shares for the total number of tickets sold and utilized for the Singapore to Tanjung Balai Route for 2010 (Figures are based on submissions from parties who had obtained them from Penguin's internal records<sup>29</sup>)

	Provision of passenger ferry services for the Singapore to Tanjung Balai Route
	2010
	% Market Share
Penguin	[100]%
SIF	[0]%

21. As set out in the above tables, there is no change in the pre and post Transaction market share in all the passenger ferry routes currently served by Penguin, as SIF would operate and provide the ferry services post-Transaction for all the routes currently served by Penguin.

**(b) Barriers to entry and countervailing buyer power**

22. Similarly, there is no change in barriers to entry and countervailing buyer power pre and post Transaction, because there is no combination of competing ferry

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

operators. As such, CCS is of the view that the Transaction will not give rise to any change in market structure.

## VII. Assessment of Competition Effects

### (a) Non-coordinated effects

23. Non-coordinated effects may arise where, as a result of the 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<sup>30</sup>. CCS is of the view that non-coordinated effects are unlikely to arise as there are no overlapping markets between Penguin and SIF businesses. CCS notes that with the Transaction, there is no change in the market structure of the passenger ferry market.

### (b) Coordinated effects

24. Based on feedback obtained on the Transaction<sup>31</sup>, there were concerns of a situation whereby substantial lessening of competition could arise due to familial affiliations between SIF and Pacific Ferry Pte Ltd (Pacific), a competing ferry operator on the Singapore-Sekupang route with Penguin and Batam Fast.

25. At the time when the Form M1 was filed, the shareholders of each of SIF and Pacific do not hold shares or occupy directorship positions in Pacific and SIF respectively and Parties have submitted that on or before the completion of the Transaction, [redacted]<sup>32</sup>. Parties have further submitted that SIF is not aware of any other businesses in which SIF's shareholders (or their family members); and the shareholders of Pacific Ferry Pte Ltd (or their family members) are both involved in, in Singapore<sup>33</sup> [redacted]. CCS has considered the links and has found that they are unlikely to have any impact on the assessment of the Transaction. The case team is satisfied that post-divestment, the Transaction will not substantially lessen competition in the provision of ferry services.

26. As such, there is no combination of horizontal competitors arising from the transactions. The parties have no horizontal overlap that could possibly lead to coordinated effects, if any, attributable to the Transaction. As such, CCS considers that it is unlikely that coordinated effects will arise as a result of the Transaction.

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<sup>30</sup> CCS Guidelines on the Substantive Assessment of Mergers, paragraph 6.3

<sup>31</sup> Written submissions by [redacted]

<sup>32</sup> Form M1, paragraph 2.2 and Affidavits of each of the shareholders of SIF and Pacific received via email from WongPartnership LLP to CCS dated 3 June 2011 and 6 June 2011

<sup>33</sup> Parties response dated 12 May 2011 to Letter from CCS dated 9 May 2011.

**(c) Efficiencies**

*(i) CCS' assessment*

27. Parties did not make separate submissions in relation to the efficiencies achievable through the Transaction. However, CCS is of the view that regardless of the efficiencies which could potentially arise from the Transaction, due to the fact that there are no overlapping markets, it is not necessary for CCS to take these efficiencies into account in the assessment of the Transaction.

**VIII. Ancillary Restrictions**

28. The Parties have notified the following restrictions entered into pursuant to the Transaction.

*Vendor Restrictions*

29. In the Sale and Purchase Agreement<sup>34</sup> (“SPA”) entered into between the Parties, Penguin International Limited and its subsidiaries agree not to

- (i) As set out in Clause 7.6(a) of the SPA, carry on any business that is similar to or competitive with the business of Penguin for a period of 5 years in any of the countries where the Penguin is or propose to carry on business in at the time of completion;
- (ii) As set out in Clause 7.6(b) and 7.6(c) of the SPA, solicit or accept customers of Penguin (including those who have been customers of Penguin within the past 12 months) for a period of 2 years; and
- (iii) As set out in Clause 7.6(e) of the SPA, at any time induce or attempt to induce employees of the Penguin to terminate their employment.

The period for which Clauses 7.6(a), 7.6(b) and 7.6(c) shall apply shall commence after Completion<sup>35</sup>. These restrictions as notified do not apply to the Excluded Business. These restrictions will be collectively referred to as the “Vendor Restrictions”.

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<sup>34</sup> Form M1, Schedule 1

<sup>35</sup> Completion is as defined in the Sale and Purchase Agreement between SIF Group Pte. Ltd. and Penguin International Limited.

*Acquiror Restrictions*

30. In the SPA entered into between the Parties, SIF agree not to:

- (i) As set out in Clause 7.7(a) of the SPA, carry on any business that is similar to or competitive with the Excluded Business; and
- (ii) As set out in Clause 7.7(b) of the SPA, solicit Tian San Shipping Pte Ltd or [X] to cease doing business in respect of the Excluded Business.

The period for which these restrictions shall apply shall commence after Completion and will last for a period of 5 years. These restrictions will be collectively referred to as the “Acquiror Restrictions”.

31. During CCS’ review of the Transaction, the Parties agree to amend Clause 7.6(a) of the SPA to limit the non-compete obligations to the duration of three years after Completion and to replace Clauses 7.7(a) and 7.7(b) to the following:

That SIF agree not to

- (i) As set out in the amended Clause 7.7(a), use any Confidential Information<sup>36</sup> relating to the Excluded Business to engage in any business competitive with the Excluded Business for 3 years after Completion; and
- (ii) As set out in the amended Clause 7.7(b), involve certain named employees in any business or activity that is competitive with the Excluded Business for 3 years after Completion.

32. Conditional upon the Parties' amendments to Clause 7.6(a) to limit the Vendor non-compete obligations to the duration of three years after Completion, and the replacement of Clauses 7.7(a) and 7.7(b) with confidentiality obligations in respect of the Excluded Business and employee restrictions in respect of their involvement in the Excluded Business, both of which for a period of 3 years after Completion<sup>37</sup>, CCS is of the view that the Vendor Restrictions and Acquiror Restrictions (as amended) of the SPA is directly related and necessary to the implementation of the Transaction and therefore constitutes ancillary restrictions. Consequently, it falls within the exclusion under paragraph 10 of the Third Schedule of the Act.

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<sup>36</sup> Confidential Information is as defined in the Sale and Purchase Agreement between SIF Group Pte. Ltd. and Penguin International Limited.

<sup>37</sup> Letter from WongPartnership LLP to CCS dated 23 May 2011

**IX. Conclusion**

33. 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.



Toh Han Li  
Acting Chief Executive  
Competition Commission of Singapore