

## REFERENCE RELATING TO THE ANTICIPATED ACQUISITION BY SVITZERWIJSMULLER A/S OF ADSTEAM MARINE LIMITED

### Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure

#### Introduction

1. On 31 August 2006 the Office of Fair Trading (OFT) in the exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act) referred to the Competition Commission (CC) for investigation and report the anticipated acquisition by SvitzerWijsmuller A/S (SvitzerWijsmuller) of Adsteam Marine Limited (Adsteam Marine).
2. In its provisional findings on the reference notified to SvitzerWijsmuller and Adsteam Marine (the main parties) on 5 December 2006, the CC inquiry group (the Group) concluded provisionally that the acquisition would result in the creation of a relevant merger situation; and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within the market for harbour and terminal towage services in Liverpool.
3. This notice sets out the actions which the Group considers might be taken by the CC, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC and any resulting adverse effects in relation to harbour towage services in Liverpool and invites comments on possible remedies (see note).

#### Criteria

4. In choosing appropriate remedial action, the Group will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects identified as expected to result from the merger. When deciding on an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the Group considers equally effective, it will choose that which imposes the least cost or restriction.

#### Possible remedies on which views are sought

##### *Divestiture*

5. The Group invites views on a divestiture remedy in respect of towage operations in the Port of Liverpool as an appropriate remedy for the expected SLC.
6. In identifying a divestment package, the CC will normally seek to identify the smallest operating unit of a business that contains all the relevant operations pertinent to the area of competitive overlap and that can compete successfully on a stand-alone basis. The Group's starting point is that divestment of the acquired business in the area of the competitive overlap—in this case, Adsteam UK Ltd's business in Liverpool—would in principle address the adverse effects it has identified. However,

the Group will also consider whether the sale of another divestment package, including but not limited to the acquirer's business (ie that of Svitzer Marine Ltd), in Liverpool is likely to be a more effective remedy.

7. It is envisaged that an effective divestiture would involve the following elements:
  - The towage operations to be divested will include either those owned by Adsteam UK Ltd (Adsteam) or those owned by Svitzer Marine Ltd (Svitzer) in Liverpool. The Group invites submissions as to the practicability of divesting either operation and whether the identity of the operation will affect the saleability of the divestiture package to a suitable purchaser.
  - The Group will also consider whether other assets, including operations at other ports, need to be included in the divestiture package to attract a suitable purchaser and whether any other measures or rights would be necessary for the divested business to compete effectively on a sustainable basis.
  - The divestiture package will be divested to a suitable purchaser, which is independent of SvitzerWijismuller and has the resources, expertise and incentive to maintain and develop the divested operation as a viable and active competitor, and which would not be likely to recreate the adverse effects as a result of the divestiture.
  - The Group will specify a period within which the divestiture must occur (the initial divestiture period) and will consider using a divestiture trustee to effect the divestment at no minimum price should it not have been effected by the end of that period.
8. Further, the Group considers that it may be appropriate to put in place measures that prohibit the combination of the UK towage operations of the main parties until an appropriate divestiture package has been divested to a suitable purchaser.

### ***Other remedies***

9. The Group is minded to conclude that prohibition of the merger of UK operations is not proportionate to remedy the SLC identified.
10. The Group is not, at this stage, proposing behavioural remedies for discussion as it considers that behavioural remedies are unlikely to be effective in addressing the SLC and its resulting adverse effects. Notwithstanding this, the Group remains willing to consider any practical alternative remedies to divestiture that the main party or other persons would like to propose which they consider would address the expected SLC effectively.
11. The Group also considers it unlikely that it will recommend that remedial action should be taken by others.

### **Relevant customer benefits**

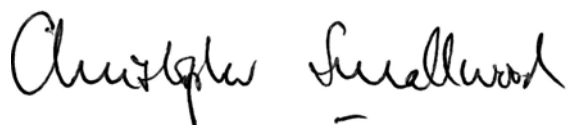
12. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the acquisition. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has accrued as a result of the creation of the relevant merger situation

concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

13. The Group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits.

### **Next steps**

14. The main parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **15 December 2006** (see note).
15. A copy of this notice will be posted on the CC's website. Other interested parties are requested to provide any views in writing, including any other practical remedies they wish the Group to consider, by **15 December 2006**.



Christopher Smallwood  
*Group Chairman*  
5 December 2006

*Note:* This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings notified to the main parties on 5 December 2006. The main parties have until 28 December 2006 to respond to those provisional findings. In the light of any responses by the main parties, or by other interested or affected third parties, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.