

***Case No COMP/M.4772 -
CARLYLE / ZODIAC
MARINE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 17/09/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/09/2007

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Madam(s) and/or Sir(s),

**Subject: Case No COMP/M.4772 – Carlyle / Zodiac Marine
Notification of 10.08.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹ Publication in the Official Journal of the European Union No. C
193, 21.08.07, p.12**

1. On 10.08.2007, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 (“Merger Regulation”) by which the undertaking The Carlyle Group (hereinafter referred to as “Carlyle”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of Zodiac Marine, one business segment of Zodiac S.A. (hereinafter referred to as “Zodiac”) by way of purchase of shares.

I. THE PARTIES

2. Carlyle is a global private equity firm. Within its portfolio companies, it has sole control of Waterpik Technologies, Inc, a U.S. based company active inter alia through a wholly-owned subsidiary, Jandy Pool Products, Inc. (“Jandy”), in pool and spa products. A limited range of Jandy’s pool care products is sold in Europe, specifically in France, Portugal, Spain and the United Kingdom. These sales are made through independent distributors and represent less than [0-10%] of Jandy’s total turnover.

¹ OJL 24, 29.1.2004 p. 1.

3. Zodiac Marine is one of the five business segments of the French company Zodiac. It is active worldwide in six business areas: above-ground swimming pools, swimming pool care products, inflatable recreational boats and rafts, inflatable military and professional boats, inflatable safety equipment, and waste water collection and treatment of the marine industry. Within Europe, Zodiac Marine achieves its largest sales in France (almost half of its European sales), Italy, Germany, Spain and Belgium.

II. THE OPERATION AND THE CONCENTRATION

4. Pursuant to an Agreement signed on 18 June 2007, Carlyle will acquire [$>60\%$] of the shares of the acquisition vehicle Marine Investment France S.A.S. ("MIF"), which will acquire from Zodiac 100% of Zodiac Marine's share capital. The remaining share of MIF will be ultimately held by Zodiac and Zodiac Marine management. Zodiac will have no veto rights over any decisions other than those which minority shareholders typically have in order to protect their investment.² Therefore Carlyle will exercise sole control over Zodiac Marine. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3 of the EC Merger Regulation.

III. COMMUNITY DIMENSION

5. Carlyle achieved a world-wide turnover of € [...] and a Community-wide turnover of € [...] in 2006. Zodiac Marine achieved a world-wide turnover of € 477 million and a Community-wide turnover of € [...] million in 2006. Zodiac Marine does not achieve a turnover exceeding €25 million in three Member States. The notified concentration therefore does not have a Community dimension within the meaning of Article 1 of the Merger Regulation.
6. However, on 4 July 2007 the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the Merger Regulation and Article 6(5) of Protocol 24 of the EEA agreement that the concentration was capable of being reviewed under the national competition laws of at least three Member States, namely Austria, France, Germany, Greece, Portugal, Slovakia and Spain and in one EFTA country, Norway, and requested the Commission to examine it. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation.
7. Therefore the concentration is deemed to have a Community dimension pursuant to Article 4(5) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

8. The proposed transaction concerns the sector of pool care products where both parties are active. Pool care products include: (i) water treatment products (SWC, mineral purification and pH regulators); (ii) filtration systems (pumps, filters and valves); (iii) pool heating equipment (heat pumps, electric heaters, heat exchangers and boilers); (iv) Automatic Pool Cleaners ("APC") (suction, hydraulic pressure, electric); (v) dehumidifiers for indoor pools; (vi) ladders and steps; (vii) skimmers; (viii) covers and rollers; (ix) liners; (x) control box; (xi) water falls and water designs; (xii) panels for in-ground pools; (xiii) stone copings; and (xiv) lights.

² E.g. by-laws modification, transactions of mergers and acquisitions, transfer of assets.

9. The merger at stake will result in overlaps with respect to salt water chlorinators in France, and heat pumps in France, Spain and Portugal.

A. Relevant product markets

Salt water chlorinators ("SWC")

10. SWC are used to sanitize pool water and eliminate bacteria, viruses and algae and function by adding salt to pool water, and passing the salt water through a cell which electrolyzes it and produces chlorine. Alternative water treatment methods include active oxygen, bromine, chlorine and electrolyzed salt.
11. In a previous case³, the French Competition Authorities, while leaving the exact definition open, examined a market including all water treatment methods as well as the market for SWC. The exact product market definition may be left open for the purposes of the present case as Jandy is only active in the sale of SWC, which is the narrowest possible market definition.

Heat pumps

12. Heat pumps are used to heat the water in the pool, and function by extracting heat from the air and transferring it to the water through a thermodynamic process. Other systems include gas heater, oil-fired gas heater, solar heater, electric heater and heat exchanger. In France, Spain and Portugal, which are the Member States where the parties' activities overlap, heat pumps are the most commonly method used to heat pool water and represent approximately [80-90%] of value of the sales of all pool heating equipments.
13. In the case mentioned above, the French Competition Authorities had considered the market as including all pool heating equipment. The notifying party submits that the definition of the exact product market can be left open as the outcome of the competitive assessment would remain unchanged under any alternative product market definition.

B. Relevant geographic markets

14. In Case *Zodiac European Pools/Piscine Services Anjou*, the French Competition Authorities considered that the markets of SWC and heat pumps could be national in scope, although the main market players were usually active on a European or worldwide scale.
15. In line with this approach, the notifying party provides information on the basis of national markets. This submission is consistent with the results of the market investigation, which confirm the national features of the markets for pool equipments, in particular in view of the presence of different market players, of significant price differences and of differences in consumption habits.

C. Competitive assessment

16. While Zodiac Marine is a significant market player in the pool care products in the EEA, the transaction will only result in few overlaps as Jandy's business concentrates on the US territory and its presence in Europe has been limited so far to the sale of a limited number of pool care products in a few Member States, through independent distributors.

³ Merger between Zodiac European Pools and Piscine Services Anjou (2004).

Salt water chlorinators ("SWC")

17. The proposed transaction will lead to one affected market for SWC, in France where the combined entity has a market share of [10-20%] (Zodiac Marine, [10-20%]; Jandy, [0-5%]). In view of this market share, the small increment brought about by the transaction and the presence of numerous other competitors such as Stérilor [20-30%], Pacific Industrie [10-20%] and Monarch Pool Systems [10-20%], it is unlikely that the transaction will raise any competition issue in the market for SWC in France.

Heat pumps

1. Introduction

18. The table below shows the merged entity's market shares⁴ which lead to an affected market in the EEA in the markets for all pool heating equipments and in the possible narrower markets of heat pumps:

EEA-State	All pool heating equipments				Heat pumps			
	Total market value (k€)	Zodiac market share	Jandy market share	Parties' combined market share	Total market value (k€)	Zodiac market share	Jandy market share	Parties' combined market share
France	[20,000-40,000]	[70-80%]	[0-5%]	[70-80%]	[20,000-40,000]	[70-80%]	[0-5%]	[70-80%]
Spain	[0-5,000]	[20-30%]	[20-30%]	[50-60%]	[0,000-5,000]	[20-30%]	[30-40%]	[50-60%]
Portugal	[0-5,000]	[20-30%]	[20-30%]	[50-60%]	[0,000-5,000]	[20-30%]	[20-30%]	[50-60%]

19. Despite the high market shares of the merged entity on the markets for pool heating equipments and heat pumps in France, Spain and Portugal, the market investigation revealed that the concentration would not, however, be detrimental to competition in these markets as there will remain a sufficient number of alternative and effective heat pumps suppliers available for distributors and pool builders.

20. First and foremost, the market investigation confirmed that the market shares achieved by Jandy in Spain and in Portugal significantly overstate its effective position in the markets, as these sales are largely attributable to the distributor itself rather than to a specific feature of Jandy's products. Indeed, Jandy is not even directly present in the EEA but only sells heat pumps through an independent distributor called Astral, a Spanish manufacturer and a significant distributor of swimming pools and pool care products active worldwide.

21. The response of Astral to the market investigation strengthened the importance of the role of distributors rather than the manufacturer as such for the sale of heating equipments. Astral

⁴ Parties' estimates for 2006.

indicated in that respect that, should the new company decide to stop supplying them, they were confident to find alternative suppliers and provided several names of suppliers with the capability to offer good quality heat pumps. The dependence of Jandy upon Astral is confirmed by the content of the agreement between these companies, according to which [...]⁵.

22. Secondly, the respondents to the market investigation including pool heating equipment manufacturers, distributors and customers confirmed that local distributors play a key role for ensuring a successful presence in the market and would be able to switch to alternative suppliers, in particular as the markets concerned are still small but growing significantly.
23. Finally, none of the market players raised any specific competition concerns with respect to the impact of this transaction.
24. Each of these elements has to be taken into account when examining the specificities of each affected market.

2. France

25. As regards the specific competitive situation in France, the markets for pool heating equipments, and heat pumps in particular, are still a small market in value and volume (approximately [10,000-30,000] heat pumps were sold in 2006) and are estimated by the parties to grow at an annual rate of [5-15%] in the next four years. Currently only [0-10%] of in-ground pools in France are equipped with a heat pump and sales of heating equipments only represent [0-10%] of the total sales of pool care products in France.
26. Pre merger, Zodiac Marine is already the clear market leader in the markets for all pool heating equipments and for heat pumps, with [70-80%] and [70-80%] market shares respectively. Zodiac Marine distributes heat pumps and other pool heating equipments in France through the distribution network of its daughter company, Piscine Service Anjou.
27. Jandy's heat pumps are sold through Astral, which has a network of eight distribution centres and a sales force of 30 representatives in France. Sales of Jandy's heat pumps by Astral have not been significant up to now as they represented only [0-5%] of the total market.
28. Several alternative suppliers are active in the market for all pool heating equipments including heat pumps: Procopi ([0-10%] market share on all pool heating equipments and [0-10%] on heat pumps) is a French manufacturer of heat pumps and offers a broad portfolio of pool care products through 12 distribution centres in France; Calorex ([0-10%] on heat pumps) is a UK manufacturer of heat pumps distributed in France by Aqualux, a French company distributing a wide range of pool care products; Pontoon ([0-10%] on all pool heating equipments and [0-10%] on heat pumps) is a French distributor of heat pumps and other pool care products; and other smaller manufacturers or distributors.
29. In addition to the fact that the merger will not lead to a significant change of the competitive situation in the market, given the limited presence of Jandy, the merged entity will also remain largely dependent on distributors and pool builder networks, which confirmed during the market investigation that they usually source heating equipments from several suppliers and submitted a list of several alternative suppliers to the parties. Zodiac Marine's largest customers are mainly

⁵ Zodiac Marine is an active market player in France and Spain, where it has its own distribution centres, whereas it is only active through an independent distributor in Portugal.

pool builder networks. These customers can easily switch to other heat pump suppliers, as shown by the recent delisting of Zodiac Marine heat pumps by [...]⁶.

30. In view of these elements, the operation does not raise serious doubts as to its compatibility with the common market in respect of French market.

3. Spain

31. In Spain, the markets of pool heating equipments and heat pumps in particular are still very small in size as only [0-10%] of in-ground pools in Spain are equipped with a heat pump⁷, although the markets are growing quickly as reflected by a [10-20%] growth of the sales of heat pumps between 2005 and 2006, following a [10-15%] growth between 2004 and 2005. The parties submit that the growth should continue at an estimated rate of [0-10%].
32. Jandy is currently the leading supplier of heat pumps in Spain, with a market share of [30-40%], thanks to the strong presence of Astral, which has 33 distribution centres in Spain and offers a wide portfolio of more than 15,000 pool care products. Astral is at the same time a competitor on the market as it is active in the sale of its own brand of heat pumps and achieves a market share of [10-20%] in the Spanish market for heat pumps ([0-10%] on a market for all pool heating equipments). Zodiac Marine has a market share of [20-30%] of the market of heat pumps ([20-30%] on all pool heating equipments) and sells pool heating equipments through its subsidiary, entirely dedicated to the distribution of Zodiac marine pool equipment to pool builders and installers in Spain.
33. Other competitors include Calorex ([0-10%] and [0-10%] on the markets for all pool heating equipments and heat pumps respectively) which is distributed in Spain by a local company and several local or international players such as Tecnopool, a Spanish manufacturer and distributor of heat pumps and Aquacal, a US based company, currently the largest global manufacturer and distributor of heat pumps.
34. However, as explained above, Jandy's market share does not accurately reflect its market power, as it achieves its sales through the independent distributor Astral and there are sufficient alternative suppliers.
35. In view of these elements, the operation does not raise serious doubts as to its compatibility with the common market in respect of the Spanish market.

4. Portugal

36. In Portugal, only [0-10%] of in-ground pools are equipped with a heat pump and sales of pool heating equipments and heat pumps in particular are still small with only [0-5,000] heat pumps sold in 2006 and [0-1,000] other heating equipments. However it is growing quickly ([20-30%] between 2004 and 2006 in volume).
37. The parties are both active in Portugal through independent distributors, Zodiac Marine through the American company SCP Pool Corporation, active worldwide in the distribution of pool equipments and Jandy through Astral. Zodiac Marine and Jandy hold respectively markets

⁶ [...]

⁷ Heat pumps represent [80-90%] of the value and [40-50%] of the volume of the total sales of all pool heating equipments in Spain.

shares of [20-30%] and [20-30%] of the market for all heating pool equipment and [20-30%] and [20-30%] of the market for heat pumps.

38. However, as discussed above, these market shares do not accurately reflect the market power of both companies as the strength of their presence rather relies on their distributors and the merged entity will remain constrained by the ability of its distributors to switch to an alternative supplier of heat pumps.
39. In addition, the merged entity is already facing competition from other manufacturers, Heliotek, a Brazilian manufacturer and distributor of a wide range of pool care products ([0-10%] and [0-10%] on the markets for all pool heating equipments and heat pumps respectively), Calorex ([0-10%] and [0-10%]) and a US based company, Heat Siphon, manufacturer of heat pumps ([10-20%] on the market for heat pumps).
40. In view of these elements, the operation does not raise serious doubts as to its compatibility with the common market as regards the Portuguese market.

V. CONCLUSION

41. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission