

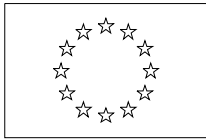
***Case No COMP/M.3071 -
CARNIVAL
CORPORATION / P&O
PRINCESS (II)***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 10/02/2003

*Also available in the CELEX database
Document No 303M3071*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.02.2003

SG (2003) D/228457

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3071 - Carnival Corporation / P&O Princess (II)
Notification of 08.01.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 08.01.2003, the Commission received a notification of a concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Carnival Corporation ("Carnival") and P&O Princess plc ("POPC") agree to create a dual listed company ("DLC") structure combining their activities.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Carnival is an American-based cruise company active world-wide, with brands including Holland America, Costa, Cunard, and others. POPC is a UK-based cruise company, with brands including Princess, Swan Hellenic, and others.

II. THE CONCENTRATION

4. On 27.02.2002, the Commission received a notification of a proposed concentration by which the US-based undertaking Carnival was to acquire, within the meaning of

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

Article 3(1)(b) of the Merger Regulation, control of the whole of the British undertaking POPC by way of a public bid announced on 16.12.2001. On 24.07.2002, following an in-depth enquiry, the Commission adopted a decision under Article 8(2) of the Regulation, declaring the operation compatible with the common market (hereafter referred to as “the Clearance decision”)².

5. The current notification relates to a DLC that was announced by Carnival on 24th October 2002, and recommended by the board of directors of POPC on 7th January 2003. The present operation, which replaces the previous notified transaction, will not involve a merger or transfer of assets between Carnival and POPC; instead the two companies will be managed and operated as if they were a single economic enterprise pursuant to contractual arrangements and amendments to each company's constitutional documents. Although each company will continue to have a separate existence, the boards and senior management of each company will be identical.

III. COMMUNITY DIMENSION

6. In view of the world-wide and Community turnover figures of the parties, the concentration has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKETS

7. In its Clearance decision, the Commission concluded that the relevant product market was that of the supply of oceanic cruises. Furthermore, the Commission left open the question whether luxury cruises and niche oceanic cruises constituted separate relevant product markets, and noted that river cruises and coastal ferry cruises did not belong to the same market as oceanic cruises.
8. As to the geographic dimension of the relevant market, the Clearance decision concluded that the latter was national in scope (i.e. UK, Germany, Spain, Italy and France).
9. The market investigation in the current case has not provided the Commission with grounds allowing to conclude that the market definition retained in the Clearance decision is not longer applicable. Consequently and for the purposes of the present case, it is still valid.

V. ASSESSMENT

10. In the Clearance decision the Commission's main findings were, in particular, that the strong growth enjoyed in the relevant national cruise markets (principally the U.K. and Germany, but also Mediterranean markets such as France, Italy and Spain), the absence of substantial barriers to entry and the ability for rivals in these markets to shift capacity, for example from the US to the UK, would exert a sufficient competitive pressure on the merged company to prevent the creation of a dominant position.
11. Carnival and POPC assert that all of the above-mentioned factors leading to the Clearance decision continue to be present and that there have been no material

² Case COMP/M. 2706 – Carnival Corporation/P&O Princess.

changes in any relevant market since that time. In particular, the notifying parties assert that:

- the cruise operators identified in the Clearance decision remain active competitors in cruising and none has ceased or significantly reduced their cruise operations since then. Even the UK operator Airtours/MyTravel, which has been reported to have some financial difficulties, shows no signs of diminishing its cruise operations;
 - prospects for continued growth in the number of cruise passengers in Europe remain good. The number of cruise passengers is expected to grow by an average annual growth rate of around 8% in the period 2000 – 2006;
 - there continue to be no substantial barriers to entry to the cruise industry. For example, in October 2002 the formation of a new cruise line called “Oceana” was announced through the expected charter of the first two ships (with an option for a third), to be launched in summer 2003.
12. The Commission has invited interested third parties to submit their views on the current operation, and no significant changes in any relevant market have been identified since the Clearance decision .
13. As to the DLC structure, the purpose of its adoption by the parties was that some of the POPC shareholders (such as tracker funds and certain other institutions) would be unable or unwilling to hold "foreign" shares in a merged Carnival/POPC company that was listed solely on the New York Stock Exchange, whereas the DLC structure enables those shareholders to retain their shares in the new combination, since POPC (as part of the DLC) will retain a listing on the London Stock Exchange. The Commission's investigation has revealed that the DLC structure has no particular significance for the competitive analysis of the proposed transaction, and from a competition point of view the current transaction is not materially different from the takeover proposal which was notified previously and cleared by the Commission on 24th July 2002.
14. In the light of all of these considerations, it can be concluded that the reasoning of the Clearance decision remains valid.

VI. CONCLUSION

15. 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 (EEC) No 4064/89.

For the Commission

(Signed)

Mario MONTI

Member of the Commission