

***Case No COMP/M.4129 -
THULE / CHAAS
HOLDINGS /
ADVANCED
ACCESSORY SYSTEMS /
VALLEY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/08/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/08/2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

**Subject: Case No COMP/M.4129 – THULE / CHAAS / ADVANCED ACCESSORY SYSTEMS / VALLEY
Notification of 20/07/2006 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. Following a referral pursuant to Article 4(5) of Council Regulation No 139/2004 (“the EC Merger Regulation”), on 20.07.2006 the Swedish company Thule AB (hereinafter referred to as “Thule”) notified its intention to acquire i) the Dutch company CHAAS Holdings BV, (ii) the US company Advanced Accessory Systems LLC and (iii) Valley Industries Inc., all three currently indirectly controlled ultimately by the US private equity company Castle Harlan Inc. (“Castle Harlan”), within the meaning of Article 3(1)(b) of the EC Merger Regulation.
 2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the EC Merger Regulation, and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.
- I. THE PARTIES**
3. **Thule** is a company active in the manufacturing and sale of load carrying systems for passenger cars, trailers for passenger cars, traction equipment for passenger cars and for heavy vehicles and accessories for recreational vehicles, such as mobile homes and caravans.

¹ OJ L 24, 29.1.2004 p. 1.

4. Thule is owned in 73% by an English private equity fund, the Candover 2001 Fund, which is a wholly owned subsidiary of the British private equity firm Candover Investments plc. ("Candover"). No other company within the group of companies owned or controlled by Candover is active in the business of Thule.
5. **CHAAS Holdings BV ("CHAAS")** is a holding company indirectly controlled by the US-based Advanced Accessory Holdings Corporation, a portfolio company of the US private equity company Castle Harlan. CHAAS' only business activity is being the shareholder of 100% of the shares of the Dutch company Brink International BV ("Brink"). Brink manufactures and distributes tow bars and distributes (but does not manufacture) wiring kits in Europe. Brink has subsidiaries in the Netherlands, Denmark, the UK, France, Italy, Poland and Sweden.
6. **Advanced Accessory Systems LLC ("AAS")** is a US limited liability company which is also currently indirectly controlled by Advanced Accessory Holdings Corporation (and hence by the US private equity company Castle Harlan). Prior to the proposed transaction, AAS will undertake an internal restructuring which leads to the result that AAS will hold and control only one subsidiary, the company SportRack Accessories Inc. ("SportRack"). SportRack designs, manufactures and distributes load carrying systems for cars mainly for the Canadian market.
7. **Valley Industries Inc. ("Valley")**, also a company indirectly controlled by Advanced Accessory Holdings Corporation (and hence by the US private equity company Castle Harlan), is a supplier of complete towing systems and related accessories. Valley is mainly active in the North American market.
8. CHAAS, AAS and Valley, all three companies currently indirectly controlled by the US private equity company Castle Harlan, are hereafter together referred to as the "**Target**". The Target's main activity in Europe (via CHAAS/Brink) is the manufacture, distribution and sale of tow bars including wiring kits for passenger cars and trailers. Furthermore, the Target (via AAS and Valley) manufactures, distributes and sells car accessories in North-America and also has some minor sales of load carrying systems (exclusively bike carriers) in Europe.

II. THE CONCENTRATION

9. The operation concerns the acquisition of all the shares of CHAAS and AAS as well as all the assets of Valley. The envisaged transaction accordingly concerns the acquisition of sole control by Thule over the Target. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

10. The operation does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation.
11. On 18.05.2006, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the EC Merger Regulation that the concentration was capable of being reviewed under the national competition laws of at least three Member States, namely Austria, Germany, Greece, Italy, Ireland and Sweden and in one EFTA country, Norway, and that the concentration should be examined by the Commission. 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 EC Merger Regulation. The case is therefore deemed to have a Community dimension pursuant to Article 4(5) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

A. RELEVANT MARKETS

a. PRODUCT MARKETS

12. The transaction involves three different types of car accessories: (i) tow bars and wiring kits; (ii) trailers for passenger cars and (iii) load carrying systems for passenger cars.

Tow bars and wiring kits

13. A tow bar is a bar or rigid linkage used to tow a vehicle, such as a trailer or a caravan to the car. In addition, tow bars are in some cases needed to fix a specific type of rear mounted bike carriers to the back of a passenger car. Wiring kits are used to plug into the vehicle attached to the car in order to enable the lights of the attached vehicle to shine at the correct intensity.
14. According to the parties, the market for tow bars including wiring kits constitutes a relevant product market. However, even if there are arguments to differentiate between markets for tow bars and market for wiring kits, given the lack of any horizontal overlap between the parties, the precise product market definition can be left open for the purpose of the present case.

Trailers

15. Trailers are transport vehicles connected with and hauled by a car, truck or tractor. The parties are only active in the manufacture and distribution of trailers designed to be connected with and hauled by passenger cars.
16. The parties submit that the market for trailers for passenger cars might be divided into four segments: leisure trailers, boat trailers, commercial trailers and horse trailers. However, even if trailers which serve different transportation purposes might be considered as separate relevant product markets, given that the overlap between the parties is far below [10-20%] under any possible market definition, the question of the precise product market definition can be left open for the purpose of the present case.

Load Carrying Systems

17. Load carrying systems are attached to cars and serve to transport additional load or luggage. Load carrying systems include such different products like roof racks, rooftop boxes, carrier baskets, roof and rear mounted bike carriers and various other carriers for the transport of snow board, canoes and other sport equipments.
18. The Commission's market investigation² did not bring a clear answer as to the question whether certain types of load carrying systems might constitute separate relevant product markets. However, given the Target's minor sales of load carrying systems in

² Answers to the Article 11 letter of 31.07.2006 to competitors and to customers, question 6, 7, 8 on product market definition.

Europe, the question of the precise product market definition can be left open for the purpose of the present case.

b. RELEVANT GEOGRAPHIC MARKETS

Tow bars, wiring kits and load carrying systems

19. According to the parties, the markets for tow bars including wiring kits is EEA-wide, given the similar technical standards across Europe, the fact that customers often purchase centrally and the high degree of cross-border trade flow. In addition, the parties also consider the market for load carrying systems to be EEA-wide in scope.
20. However, the Commission's market investigation³ provided several indications that the markets in question are still national in scope. The price data submitted by the parties for tow bars, wiring kits and the different types of load carrying systems show that significant price differences still exist between the Member States. Also the market shares of the parties vary significantly between different countries.
21. Due to the fact that the proposed transaction would not lead to competition concerns even based on the narrowest possible geographic market definition (i.e. national markets), the exact definition of the relevant geographic markets for tow bars, wiring kits and the different types of load carrying systems can be left open in the present case.

Trailers

22. As far as trailers are concerned, the parties submit that the relevant geographic market is still rather national than EEA-wide in scope. In this regard, the parties in particular refer to the significant transportation costs involved in the distribution of trailers. According to the parties, due to the high transportation cost most suppliers aim at assembling the trailers as close to the relevant customers as possible. However, the parties also indicate that trailers may be delivered in semi knock-down modules which may be easily assembled by the relevant distributors.
23. The Commission's market investigation provided no clear indication for the appropriate geographic market definition for trailers. Due to the fact that the proposed transaction does not give rise to any competition concern based even on the narrowest possible market definition (i.e. national markets for the different types of trailers), the exact definition of the geographic markets for trailers can be left open in the present case.

³ Answers to the Article 11 letter of 31.07.2006 to competitors and to customers, question 10, 11 on geographic market definition for load carrying systems for passenger cars; Answer to the Article 11 letter of 11.08.2006 of the Commission addressed to the notifying party.

B. COMPETITIVE ASSESSMENT

a. HORIZONTAL ISSUES

24. Thule is currently not active in the manufacture and sale of tow bars and wiring kits. Accordingly, the proposed transaction only gives rise to horizontal overlaps in the markets for (i) trailers, and (ii) load carrying systems.

Trailers

25. On the EEA level, the combined market share of the parties does not exceed [10-20%] under any possible product market definition with the share of Thule being well below [5-15%] and that of the Target being even well below [0-5%].
26. As regards the different Member States, the parties' activities in trailers are mostly complementary. In particular, the Target is currently not active in those countries where Thule currently holds a significant market position (e.g. Sweden, Norway and Denmark⁴). Conversely, Thule so far has not made any sales in Italy where the Target has its main activities⁵. Considering national markets for trailers, the only horizontal overlaps would occur in Austria, Germany, and the Netherlands. However, in none of these countries the combined market share of the parties would exceed [5-15%].
27. Based on these elements, any competitive concern resulting from horizontal overlaps in the markets for trailers can be excluded.

Load carrying systems

28. On the EEA level, Thule is by far the leading supplier of load carrying systems, currently holding a market share of roughly [40-50%], however with the market position differing significantly between Member States. For several Member States, Thule's market share is well above [45-55%], namely in Austria ([65-75%]), United Kingdom ([60-70%]), Sweden ([50-60%]), Norway ([50-60%]), Finland ([50-60%]), Slovakia, Ireland, and Czech Republic ([50-60%] respectively)⁶. In addition, Thule's market share also exceeds [45-55%] in several countries for the different potential submarkets for load carrying systems.
29. Although – due to the very high market shares reported above – it cannot be excluded that Thule currently has market power or even holds a dominant position in the market for load carrying systems, a significant impediment of effective competition due to the horizontal overlaps resulting from the proposed transaction is, nevertheless, unlikely for the following reasons.

⁴ In Denmark (leisure trailers: [40-50%], boat trailers: [55-65%], commercial trailers: [30-40%], horse trailers: [25-35%]), in Sweden (leisure trailers: [40-50%], boat trailers: [55-65%], commercial trailers: [30-40%], horse trailers: [40-50%]) and in Norway (leisure trailers: [25-35%], boat trailers: [55-65%], commercial trailers: [15-25%], horse trailers: [10-20%]).

⁵ The Target's market shares in Italy are for leisure trailers [20-30%], for boat trailers [30-40%], and for commercial trailers [15-25%].

⁶ The group of countries where Thule holds a significantly weaker market position inter alia comprises Italy ([10-20%]), the Netherlands ([20-30%]), and Poland ([20-30%]).

30. As regards load carrying systems, the Target is mainly active in North America. The target's EEA-wide sales of load carrying systems are minimal (roughly €[...]), representing a market share in the EEA of less than [0-5%]. Furthermore, the Target in 2005 only had sales in two Member States, namely Germany and Italy. Even considering national markets for load carrying systems, the respective market share increment would be less than [0-5%] for Italy and less than [0-5%] for Germany.
31. The Target's sales in addition only comprise one specific type of load carrying systems, namely rear mounted bike carriers. Even based on the narrowest possible market definition (i.e. national markets for rear mounted bike carriers), the effects of the proposed transaction on Thule's market position in the respective markets would still be negligible. For the Italian market, the Target's sales would represent a market share of [0-5%]. However, Thule currently only reaches [10-20%] of the market for rear mounted bike carriers in Italy leading to a combined market share of less than [15-25%]⁷. In Germany, Thule currently holds a stronger position in the market for rear mounted bike carriers than in Italy (roughly [30-40%]). With less than [0-5%], the market share increment resulting from the proposed transaction in Germany would again be minimal.
32. Based on these elements, the Commission concludes that competitive concern resulting from horizontal overlaps in the markets for load carrying systems are excluded.

b. CONGLOMERATE ISSUES

33. A limited number of direct customers of the parties (i.e. distributors / retailers for car accessories) in the Commission's market investigation indicated that the proposed transaction mainly leads to an extension of Thule's product portfolio in the field of car accessories and therefore – in particular based on its strong market position in several markets for load carrying systems – Thule post-merger might be able to use its alleged market power in load carrying systems as a leverage to strengthen its market position and marginalize its competitors in other markets for car accessories, in particular in the markets for trailers, tow bars and wiring kits.
34. Based on these submissions, the Commission thoroughly investigated whether and to which extent the proposed transaction would increase Thule's ability and incentive to leverage its leading market position in load carrying systems and – at least in some national markets – also for trailers⁸ into the neighbouring markets for trailers, tow bars and wiring kits. Even if the existence of market power or even a dominant position of Thule in several markets for load carrying systems or – at least in some Member States of the EEA – for trailers cannot be excluded, the Commission's market investigation provided strong indications that the merged entity would not have an increased ability to significantly impede effective competition by leveraging its market power into the neighbouring markets for car accessories for the following reasons.

⁷ Also Thule's market position for the overall market for load carrying systems in Italy is weak compared to other Member States. Thule's market share in the year 2005 for load carrying systems in Italy only reaches [10-20%].

⁸ As indicated above, Thule's reaches market shares for some types of trailers in Denmark, Sweden and Norway of more than [35-45%].

35. Firstly, due to the characteristics of the products concerned (i.e. tow bars, wiring kits, trailers and load carrying systems), they are in most cases not bought simultaneously by the end-user and the ability and the incentive of the merged entity to physically bundle its products is therefore virtually non-existent. No technical complementarity exists between load carrying systems and trailers. Furthermore, as a general rule, there is no technical link between load carrying systems on the one hand and tow bars or wiring kits on the other hand with only one minor exception: tow bars and wiring kits are needed in order to fix some (but not all) types of rear mounted bike carriers to the back of the car⁹. The only significant technical link therefore exists between tow bars and wiring kits on the one hand and trailers on the other hand. Tow bars and wiring kits are necessary complementary products to all kinds of trailers.
36. However, European norms and international technical standards currently govern the technical requirements relating to tow bars¹⁰, wiring kits¹¹ and trailers.¹² Therefore, any technical alteration of the link between tow bars and wiring kits on the one hand and load carrying systems (i.e. only some types of rear mounted bike carriers) and trailers on the other with the intention to exclude compatibility with the products of competitors would result in a deviation from agreed international standards. This would entail the risk for the merged entity of losing significant sales. In addition, since deviations from international standards would also limit the ability to use different types of load carrying systems or trailers with one and the same tow bar / wiring kit, it is highly unlikely that the end-users would develop a strong preference for the bundled products of the merged entity which would deviate from established international standards.
37. Secondly, according to the results of the Commission's market investigation the ability and incentives of the merged entity to leverage its market power in load carrying systems into the markets for trailers and tow bars / wiring kits is very limited due to the existing commercial differences of the products concerned.

⁹ Other types of rear mounted bike carriers are – without needing a tow bar and a wiring kit – directly fixed to the back of the car.

¹⁰ Directive 94/20/EC of the European Parliament and of the Council of 30 May 1994 relating to the mechanical coupling devices of motor vehicles and their trailers and their attachment to those vehicles

¹¹ DIN/ISO 1724, ISO 11446

¹² Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers; Although this directive provides no EC type approval for trailers, some technical aspects of their construction are regulated at EU level (e.g. in Directive 71/320/EC on the approximation of laws of the Member States relating to the braking devices of motor vehicles and of their trailers.

38. Load carrying systems and trailers are to a large extent sold via different distribution channels. Whereas load carrying systems are mainly distributed through specialized retailers for car accessories (e.g. auto centre), trailers are distributed either through specialized retailers for the products which are to be transported (retailers for horse equipment for horse trailers, boat dealers for boat trailers) or specialized trailer dealers and building material stores. Indeed, according to the submission of the parties, none of Thule's direct customers (i.e. distributors and retailers) purchase more than one type of products from Thule.¹³ In addition, tow bars, contrary to load carrying systems and trailers, are mainly distributed by garages that are able to fit them to the car of the end-customer. Therefore the parties have no large common pool of customers. In particular, due to the limited number of common customers of the merging parties,¹⁴ it is unlikely that – e.g. by foreclosing the access of competitors to the shelf of the relevant retailers – Thule post-merger will have the ability to leverage its alleged market power in load carrying systems into the markets for trailers and tow bars / wiring kits. It should also be noted that the Commission's market investigation does not provide evidence that Thule – despite offering a product portfolio of different car accessories – pre-merger was engaged in commercial bundling practices to a significant extent¹⁵.
39. Finally, the merged entity in the markets for tow bars and wiring kits will face significant competition from a number of sizeable single-product suppliers. The merged entities main competitors in the market for tow bars are the German-based company Westfalia and the Dutch-based company Bosal. Both are active in most of the Member States in the EEA, and in most of them with a considerably stronger market position than the Target. In the market for wiring kits, the merged entities main competitors are the Dutch based company ECS and the German company Jaeger Automotive as well as several competitors that hold significant market position only in some of the Member States (e.g. MVG, Volta, Eurocade and Tremas).
40. Based on these elements, the Commission concludes that the transaction is unlikely to significantly impede effective competition due to any conglomerate effect.

¹³ Answer of Thule of 16.08.2006 to the Article 11 letter of 11.08.2006 of the Commission addressed to the notifying party, p. 21.

¹⁴ In several Member States the parties have no common customer at all. Out of the 78 direct customers of the Target in the EEA (for tow bars and wiring kits), only 19 customers are currently also customers of Thule (for load carrying systems and other products currently manufactured and sold by Thule).

¹⁵ Answers to the Article 11 letter of 31.07.2006 to competitors and to customers, question 16, 17 on package deals

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
Louis MICHEL
Member of the Commission