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*Case No COMP/M.6215 – Sun Capital /
Polestar UK Print Limited*

Only the English text is available and authentic.

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

**Article 7(3)
Date: 15.4.2011**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.04.2011
C(2011) 2828 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 7(3) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No COMP/M.6215 – Sun Capital / Polestar UK Print Limited
Request of derogation pursuant to Article 7 (3) of Council Regulation No. 139/20041

1. On 24 March 2011, Sun Capital Partners, Inc. (together with its affiliated funds and related entities referred to as "Sun", USA) requested a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 (the "Merger Regulation"), with regard to its proposed acquisition of Polestar UK Print Limited ("the Target", UK), together with certain leases necessary for the Target's business.

I THE PARTIES AND THE TRANSACTION

2. **Sun** manages a number of private equity investment funds investing worldwide.
3. **The Target** provides a range of printing and associated services to customers predominantly in the United Kingdom and operates chiefly through gravure and web offset sites throughout the United Kingdom.
4. The share capital of the Target is held by Polestar Magazines & Catalogues Limited (hereafter "Mags and Cats") and indirectly by the parent company The Polestar Company Limited (hereafter "Polestar", together with the Target "the Group") and ultimately by Ink Acquisitions Limited. The Target is the main operating company within the Group.
5. The Group is in financial distress. [...].
6. [...].

1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

7. [...].
8. [...].
9. In light of the Group's distressed financial situation and the risk of an "acceleration event"², (...), the financial advisor of the Group indicated that (...) sell the Target by way of a pre-packaged administration sale ('pre-pack'). A pre-pack is a pre-arranged sale by a company in administration of its business and assets almost immediately following the appointment of the administrator. The objective of the pre-pack arrangement is to rescue the company as a going concern.
10. On 15 April 2011 Mags and Cats was placed in administration. Administrators were appointed.³
11. The proposed transaction contemplates a sale by the administrators of the Target to Sun. The share and purchase agreement in relation to this proposed transaction was signed between Mags and Cats and other companies of the Group, the administrators and Sun on 15 April 2011. Closing of the transaction was made conditional upon receipt of a derogation pursuant to Article 7(3) of the Merger Regulation.
12. After the proposed transaction, Mags and Cats will remain in administration until it is either placed into a creditors' voluntary liquidation or it is dissolved. Simultaneously, with the transfer of the Target to Sun, Sun will be able to re-finance the Target which would be able to continue operating as a going concern. The proposed transaction is meant to preserve the maximum value possible for the Target and Sun by avoiding the negative consequences which a prolonged period under the holding company Mags and Cats in administration might trigger for the Target.⁴
13. As a result of the proposed transaction, Sun would acquire sole control over the Target. Therefore, the proposed transaction qualifies as a concentration within the meaning of Article 3 of the Merger Regulation.

II THE EU DIMENSION

14. In the year ending on 31 December 2009, Sun's worldwide turnover was EUR [...] and its EEA-wide turnover was EUR [...]. In the financial year ending on 30 September 2009, the Target's turnover was EUR [...] both worldwide and EEA-wide which it achieved mainly in the UK. Therefore the proposed transaction has an EU dimension within the meaning of Article 1(2) of the EC Merger Regulation.

III THE APPLICATION FOR DEROGATION

15. As mentioned under paragraph 10, on 15 April 2011 Mags and Cats was placed in administration.
16. Sun submits that, if the Target were to remain as a subsidiary of a company in administration for a prolonged period of time, such as the 25 working day period of

2 An "acceleration event" [...].

3 Administrators are independent officers of the Court and licensed insolvency practitioners. Under English insolvency law, the administrators of the Target have the power to sell the Target and its assets.

4 Please see section A.

review of the proposed transaction under the Merger Regulation, this would lead to further financial difficulties and to the decline of the Target's business in terms of business value and reputation which would be likely to cause, *inter alia*, customers to cancel their existing orders, and suppliers to cease delivery or to file for insolvency themselves.

17. Sun submits that a derogation from the suspension obligation imposed by Article 7(1) would allow it to preserve the maximum value possible for the Target as it would allow it to immediately implement the purchase of the Target and the restructuring of the debt. This is necessary in order to minimise further damage to the Target and to its dealings with customers, suppliers and employees which will likely flow from the appointment of an administrator and to repair the consequences of a continued uncertainty about the prospects for the Target.

IV THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE MERGER REGULATION

18. Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the internal market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on reasoned request, grant derogation from the obligation imposed in Article 7(1). Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where suspension provided for in the Merger Regulation would cause serious damage to the undertakings concerned by a concentration or to a third party. In deciding on the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

A. THE EFFECTS OF SUSPENSION ON THE UNDERTAKINGS CONCERNED AND THIRD PARTIES

19. The parties submit that a suspension would have significant negative effects on the viability of the business of the Target.
20. The Commission has granted a derogation in previous cases (which did not present competition concerns) with the purpose of preserving the financial or competitive viability of the Target business. In particular, if the Target is on the brink of bankruptcy and only immediate implementation of the proposed transaction would avoid a further grave deterioration of the situation or would prevent a significant deterioration of the assets to be acquired, a derogation may be granted.
21. In this case, the parties submit that the proposed operation, and in particular the immediate implementation of the "pre-pack" arrangement, would avoid a number of effects that could seriously damage the viability of the Target's business.
22. [...].
23. The suspension period could have a detrimental effect on the possibility for the Target to retain key contracts with customers, suppliers and lessors.
24. [...].

25. [...].
26. None of these clauses would be triggered by the envisaged pre-pack administration which will concern the Target's parent, Mags and Cats and not the Target directly.
27. [...].
28. [...].
29. On the other hand, the proposed transaction, and in particular the immediate implementation of the pre-pack arrangement would allow Sun to continue the business of the Target in an uninterrupted manner and would allow a rapid implementation of the recovery plan for the Target. This new financing is planned to enable the Target to return to a more normalised liquidity and to continue trading as a going concern. It is intended that on closing of the proposed transaction, Sun will provide the Target with [...]. Furthermore, Sun intends to advise and support the existing management of the Target in upcoming discussions with suppliers, landlords and customers of the Target so as to try to ensure their on-going support for the business.
30. From the information submitted by Sun, it appears that the derogation from the suspension obligation would not have adverse effects on any third party. The parties have provided information about the process undertaken to identify a potential purchaser for the business of the Target. [...]. The granting of a derogation to Sun is therefore unlikely to give it an undue advantage over other potential buyers.
31. Against this background, it is possible to conclude that the suspension obligation imposed by Article 7(1) is likely to lead to serious harm to the Target. Furthermore, on the basis of the information submitted by Sun, a derogation from the stand-still obligation would not have adverse effects on any third party.

B. THE THREAT TO COMPETITION POSED BY THE CONCENTRATION

32. The Target provides a range of printing and associated services to customers predominantly in the United Kingdom. It employs primarily heatset web offset and rotogravure printing technologies for the printing of newspapers, magazines, books and directories, travel brochures, annual reports and a number of other documents for financial companies.
33. There is no horizontal overlap between Sun and the Target's activities, as Sun does not control any entity which is active in the printing or associated services market.
34. The only vertical link is [...].
35. Therefore, on the basis of the information provided by the parties *prima facie* the transaction is not likely pose a threat to competition within the EEA.

C. BALANCE OF INTERESTS

36. Based on the above, it appears that whilst the suspension obligation could seriously affect the financial interests of the parties and could result in discontinuation of supplies, no threat to competition caused by the operation can currently be identified, and the derogation does not appear to have adverse effects on one or more of the parties or on any third party. Therefore the Commission finds that the derogation can be granted in accordance with the application and to the extent specified below.

V CONDITIONS AND OBLIGATIONS

37. According to Article 7 (3), 4th sentence, of the Merger Regulation, a derogation from the suspension obligation laid down by Article 7 (1) thereof may be made subject to conditions and obligations in order to ensure effective competition
38. On 31 March 2011 the Sun Group committed itself to endeavour to submit a complete notification to the Commission as early as possible and in any case no later than 5 working days from the adoption of the present decision, in order to allow the assessment of the compatibility of the proposed concentration with the internal market.
39. Based on the preceding considerations, the Commission has decided to grant a derogation from the suspension obligation with regard to the proposed concentration subject to the following obligation:
40. The Sun Group shall submit a complete notification to the Commission as early as possible and in any case no later than 5 working days from the adoption of the present decision, in order to allow the assessment of the compatibility of the proposed concentration with the internal market.

VI CONCLUSIONS

41. On the basis of the above considerations, and in accordance with Article 7(3) of the Merger Regulation, Sun is granted a derogation from the obligations imposed by Article 7 (1) of the Merger Regulation in accordance with its application, subject to the obligation specified in recital 39 and until the Commission takes a final decision under the relevant provisions of the Merger Regulation.

For the Commission

(signed)
Štefan FÜLE
Member of the Commission