



EUROPEAN COMMISSION
DG Competition

Case M.8738 - RHONE-ZODIAC / FLUIDRA

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 27/06/2018

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties

Subject: Case M.8738 – RHONE-ZODIAC / FLUIDRA
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area¹

Dear Sir or Madam,

- (1) On 3 May 2018, the European Commission ("Commission") received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the Rhône Group and Fluidra Founding Families acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Zodiac and Fluidra (the "Transaction"). Zodiac and Fluidra are further collectively referred to as "the Parties", whilst the undertaking that would result from the Transaction is referred to as "the merged entity".

1. THE OPERATION AND THE CONCENTRATION

- (2) The concentration is accomplished by way of purchase of shares in a newly created company constituting a joint venture. The Transaction consists of a

¹ OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

² 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.

statutory merger under Spanish corporate law whereby Zodiac's holding company (Piscine Luxembourg Holding 2 S.À R.L.) will be merged with Fluidra (Fluidra, S.A.). The surviving new entity will bear Fluidra's name. This new entity will be jointly controlled by (a) Rhône Capital L.L.C. (“Rhône”), the current controlling (indirect) shareholder of Zodiac, and (b) a group of natural persons forming part of the families that founded and currently control Fluidra (the “Fluidra Founding Families”).

- (3) Rhône, through Piscine Luxembourg Holding 2 S.À.R.L., will receive 42.43% of the new entity's share capital in exchange. The Fluidra Founding Families indirect shareholding will, as a result, be reduced to 28.82%. According to the governance rules of the merged entity, each of Fluidra Founding Families and Zodiac will have a veto right over the appointment and removal of all senior management positions. As a result, both Rhône and the Fluidra Founding Families will have joint control over the new Zodiac/Fluidra entity. The remaining shares will remain publicly traded on the Madrid and Barcelona stock exchanges in Spain.
- (4) Since the Transaction concerns two existing companies that have market presence in the EU, the entity resulting from the Transaction will have sufficient resources to operate independently on the market and will not have any significant sale/purchase relationship with the parents. The full functionality test is met under Article 3(4) EUMR.

2. UNION DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (in 2016, Rhône: EUR [...] million; the Fluidra Founding Families: EUR [...] million). Each of them has a Union-wide turnover in excess of EUR 250 million (in 2016, Rhône: EUR [...] million; the Fluidra Founding Families: EUR [...] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

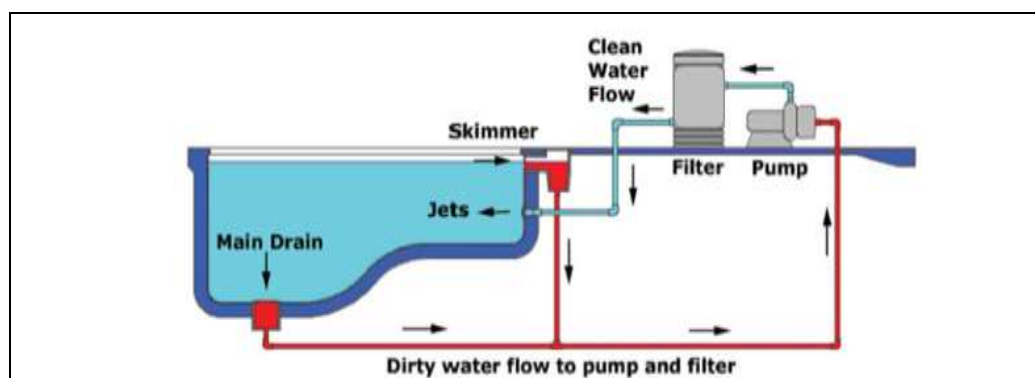
3. THE PARTIES' ACTIVITIES

- (6) Both Parties are active in the manufacture and marketing of swimming pool equipment. Fluidra, through its other subsidiaries, is also active in irrigation and water treatment, industrial and other fluid handling, and engineering of projects in water facilities. The Parties' activities overlap only with respect to pool equipment.

3.1. Introduction to pool equipment products

- (7) A typical swimming pool consists of a basin and pool equipment. Figure 1 depicts an example of a simple swimming pool set-up.

Figure 1: Basic swimming pool set-up



Source: Form CO

- (8) There are a number of key components without which a swimming pool cannot function properly. These components fall into the category of 'essential pool equipment', which encompasses:
- Swimming pool pumps, which are devices that draw water from the pool, pass it through a filter, and return it back to the pool. Pool pumps can be further sub-segmented into single speed, variable speed and booster pumps. The Parties' activities overlap with respect single and variable speed pumps.
 - Swimming pool filters, which remove smaller impurities from the water. Generally all filters can be broadly sub-divided by filtration media used: sand filters, cartridge filters, or diatomaceous earth (DE). The Parties' activities overlap with respect to sand filters (in particular, laminated polyester sand filters) and cartridge filters.
 - Pool structures: a pool structure is a basin where the water is kept. Pool structures can generally be sub-segmented into above-ground pool structures and in-ground pool structures. In-ground pool structures can be further sub-divided into concrete, vinyl-lined and fibreglass structures. The Parties' activities overlap only with respect to vinyl-lined structures.
 - Water treatment products: this category can be split between chemicals and sanitising and dosing equipment used to disinfect the pool water.

Sanitising and dosing equipment may be further sub-divided into (i) solid chemical sanitising and dosing equipment such as dispensers and feeders, (ii) liquid chemical sanitising and dosing equipment such as salt water chlorinators (SWCs), pH and ORP regulators and dosing pumps, (iii) alternative sanitisers that use ozone, UV or minerals and (iv) testing and measuring equipment.

The Parties' activities overlap in (i) liquid chemical sanitising and dosing equipment and (ii) alternative sanitisers.

- e. Other Essential Equipment: Some other equipment may also be considered essential to the functioning of a swimming pool, including so-called "white goods" (plastic equipment that forms a part of the pool basin itself which will be in contact with the water such as grids, drains, nozzles and skimmers) or piping/tubing. However, Zodiac is not active in this space and, hence, the Parties' activities do not overlap in this respect.
- (9) There is also a large number of additional pool equipment that makes the operation of a pool easier, less time consuming and more enjoyable. This is the category of 'non-essential pool equipment', and encompasses:
- a. Pool cleaning equipment: this category of products generally consists of all devices that can be used to clean a pool floor and walls and collect larger debris. Pool cleaners can be broadly sub-divided into (i) basic cleaning equipment (leaf skimmers, brushes and poles), (ii) manual suction cleaners (underwater vacuum cleaners that need to be manually guided to clean a pool), (iii) automatic suction cleaners (vacuum cleaners that do not require manual work and clean the pool surface automatically), (iv) pressure cleaners (automatic cleaning devices that use pressure to clean the pool surface) (v) robotic cleaners (also known as electric cleaners) that are fully automatic and do not use the pool's filtration system, and (vi) in-floor cleaning systems³ (in-built cleaning systems that use pressure to clean the pool floor). The Parties' activities overlap with respect to (i) robotic cleaners and (ii) automatic suction cleaners.
- b. Pool heating equipment: mostly used in colder climates to artificially heat pool water and, therefore, prolong the effective pool season. Pool heaters can be broadly sub-divided into (i) heat pumps, which function by extracting heat from the surrounding air and transferring it to pool water, and (ii) other heating equipment, which include electric heaters, heat exchangers, solar covers and solar heaters. The Parties' activities overlap with respect to (i) heat pumps and (ii) other heating equipment.
- c. Pool dehumidifiers: devices that reduce humidity in in-door pools. Both Parties manufacture those products.
- d. Water features: are decorative pool elements such as waterfalls, water curtains, fountains and jets. Both Parties manufacture those products.
- e. Pool automation: devices that can remotely control certain elements of a swimming pool such as remotely switch on pump or heat pump. Both Parties manufacture those products.
- (10) Fluidra is also active in the wholesale distribution of pool equipment products in certain EEA countries. These activities are carried out through its own traditional branches (warehouses) and its "Cash & Carry" operations. The Cash & Carry operations are self-service outlets targeted at pool professionals (i.e. pool equipment retailers and pool builders/installers of all

³ Zodiac has but does not market in-floor systems in Europe. During pre-notification, it explained that it used to market it through third party distributors but the relationship was terminated. [Details of Zodiac's future strategy].

sizes). Fluidra operates in the wholesale distribution of pool equipment through these Cash & Carry operations in Spain, Portugal, France, Italy and Bulgaria, and through warehouses in the other EEA countries.

- (11) The Transaction mainly concerns equipment for residential pools. Sales of commercial equipment represent a small share of the overall sales of the Merging Parties.
- (12) Residential pools are smaller pools for single-family homes, which usually have smaller tank capacities and are used less intensively than commercial pools. Commercial pools are usually very large, used for longer periods of time and are accessible to public.
- (13) The Parties' activities in pool structures (including under any sub-segmentations), water features and pool automation products do not result in affected markets. These products will, therefore, no longer be discussed in the present decision.

4. RELEVANT MARKETS

- (14) With the exception of heat pumps and pool heaters,⁴ there are no Commission precedents that have analysed pool equipment for which affected markets exist in this case. The Parties' activities result in overlaps for (i) pool cleaning equipment (robotic and automatic suction cleaners); (ii) water treatment products (sanitising and dosing equipment); (iii) pool heating equipment; (iv) pool dehumidifiers; (v) swimming pool pumps; and (vi) swimming pool filters. The Transaction does not result in affected markets with respect to pool structures, water features and pool automation equipment. Therefore, it will not be further analysed in the Decision.

4.1. Relevant Product Markets

4.1.1. Commercial vs residential swimming pool equipment

4.1.1.1. The Parties' view

- (15) The Parties consider that it is relevant to distinguish between residential and commercial equipment as commercial pools tend to require particularly robust and reliable, high-capacity equipment, which may form part of more complex engineering solutions compared to residential pools.

4.1.1.2. The Commission's assessment

- (16) There is no Commission relevant precedent as regards the distinction between residential and commercial pool equipment. However, in the *Zodiac/PSA* (2004)

⁴ M.4772 *Carlyle/Zodiac Marine*.

case, the French authorities took the view that distinct markets for residential pool heaters and dehumidifiers may be considered.⁵

- (17) Information collected by the Commission through its market investigation and the submission of documents by the Parties support the definition of a product market for residential pool equipment that is separate from commercial pool equipment.
- (18) A large majority of competitors, distributors and customers who responded to the market investigation stated that different market conditions apply for residential pool equipment as compared to commercial pool equipment.⁶
- (19) Several respondents highlighted significant differences between the markets for residential pool equipment and commercial pool equipment, in particular with regard to price and sales channels. A French competitor commented: "*Price positioning is not the same: the residential pool equipment market is much more competitive; residential and commercial pool equipment do not have exactly the same distribution channel; their requested skills are not the same: the commercial field is much more technical*". A Bulgarian distributor noted with regard to switching between residential and commercial equipment: "*Prices between residential equipment products and commercial is of significant difference and on the Bulgarian market, being a very price orientated market, this is not possible*".⁷ A German customer noted: "*Commercial pool cleaning equipment is too expensive for our customers*".⁸
- (20) Some market participants pointed out that commercial and residential pool equipment are governed by different standards and regulations.⁹ A French competitor mentioned that in France the use of salt water chlorinators is limited to residential pools.¹⁰ An Italian competitor commented that in most countries commercial equipment is subject to specific standards "*such as DIN, UNI or ÖNorm in Germany, Italy and Austria respectively*".¹¹
- (21) In addition, internal documents provided by the Parties show that they track commercial and residential pool equipment products separately. For instance, a document from the Fluidra subsidiary Aquatron shows that the company monitors its sales in distinct "*residential pool*" and "*commercial pool*" categories.¹²

⁵ Letter from the French Minister of Economy, Finances and Industry from 9 January 2004: case ZODIAC / PSA (available at: https://www.economie.gouv.fr/files/files/directions_services/dgccrf/boccrf/05_01/a0010009.htm).

⁶ Responses to Q7 of Q2 Competitors, Q1b Distributors and Q1a Customers questionnaires.

⁷ Response to Q6 of Q1b Distributors questionnaire.

⁸ Response to Q6 of Q1a Customers questionnaire.

⁹ Responses to Q6, Q7 and Q8 of Q2 Competitors, Q1b Distributors and Q1a Customers questionnaires.

¹⁰ Response to Q6 of Q2 Competitors questionnaire.

¹¹ Response to Q8 of Q2 Competitors questionnaire.

¹² Fluidra document provided in response to Q23 of RFI16.

- (22) The Parties' activities do not overlap with regard to commercial pool equipment with a minor exception in heating equipment and pool humidifiers, which, according to the Parties, is not material.¹³

4.1.1.3. Conclusion

- (23) In the light of the results of the market investigation and taking the other evidence available to it into account, the Commission considers that for the purposes of the present case, residential pool equipment constitutes a distinct relevant product market, the sub-segmentations of which are discussed in the sections below.

4.1.2. *Pool cleaning equipment*

4.1.2.1. The Parties' view

- (24) The Parties are of the view that all pool cleaning equipment form one uniform relevant product market.
- (25) According to the Parties, there is a continuum of functionally interchangeable products linked by a chain of substitutability; the prices of one product will overlap with one or more of the other products. For example, basic manual equipment overlaps with and directly constrains the pricing of manual vacuum cleaners, and manual vacuum cleaners will overlap with and directly constrain pricing of suction cleaners (or automatic vacuum cleaners), which in turn are a particularly close substitute to other automatic pool cleaners such as pressure cleaners, electric cleaners, and so forth.¹⁴

4.1.2.2. The Commission's assessment

- (26) The Commission has not previously assessed the market for pool cleaning equipment.
- (27) Previous national precedents, however, considered possible sub-segmentations. In particular, in case *Zodiac/PSA*¹⁵ (2004) the French competition authority considered that all manual cleaning devices have to be considered separately from automatic cleaning devices.
- (28) Manual and automatic cleaners are two broad and distinct categories of pool cleaning equipment. Manual cleaners consist of entry level pool cleaning equipment, such as brushes, poles, leaf skimmers and manual suction cleaners. Manual cleaning equipment requires manual labour to clean the pool, while automatic (robotic, suction and pressure) cleaners clean the pool without human intervention. In the present case there is no need to look further at manual and

¹³ Form CO, par. 310.

¹⁴ Paragraph 221 of the Form CO.

¹⁵ Letter from the French Minister of Economy, Finances and Industry from 9 January 2004: case *ZODIAC / PSA* (available at: https://www.economie.gouv.fr/files/files/directions_services/dgccrf/boccrf/05_01/a0010009.htm).

automatic segmentation since overlaps resulting in affected markets arise only with respect to the automatic cleaner category.¹⁶

- (29) As noted above, all automatic pool cleaning equipment can be further subdivided into robotic cleaners, automatic suction cleaners and pressure cleaners.¹⁷

4.1.3. *Robotic cleaners*

- (30) Based on the results of the market investigation the Commission finds that there is a number of demand and supply side substitutability arguments that would justify defining a separate market for robotic cleaners from automatic suction cleaners.

- (31) First, these products are inherently different and have different interaction systems with the pool which makes them unlikely substitutes. Automatic suction cleaners have to be connected to the pool's filtration system which requires additional work to install and an additional booster pump to operate.¹⁸ On the contrary, robotic cleaners are operated by a power cord and are considered in the industry as *plug-and-play* items that can be easily operated by the pool owner himself/herself. The market investigation confirmed this view, since the majority of customers, competitors and distributors indicated that main pool cleaning equipment products are in fact different.¹⁹

- (32) Second, the majority of customers responding to the market investigation confirmed the suitability of the above segmentation. Customers also indicated that there is indeed very limited demand side substitutability, since those products are priced at different price points.²⁰ Convenience of use, especially for larger pools, was cited amongst the factors that distinguish robotic cleaners from all other cleaning equipment.²¹

- (33) Third, competitors confirmed that there is no supply side substitution between automatic suction cleaners and robotic cleaners: competitors manufacturing other cleaners cannot easily and readily switch their production to robotic cleaners.²² The main reason cited was the different technological skill set necessary to produce robotic cleaners.²³ As evidenced by the parties' own patent portfolio relating to robotic cleaners, a very significant IP footprint is required in

¹⁶ According to the Parties, Zodiac has minor presence in the EEA in cleaning equipment, other than robotic cleaners, automatic suction and automatic pressure cleaners.

¹⁷ The Parties activities do not overlap with respect to automatic pressure cleaners, since only Zodiac is active with such products in the EEA.

¹⁸ [Internal Strategy Report], p. 111.

¹⁹ Responses to Q17 of Q1a Customers questionnaire, Q1b Distributors questionnaire and Q2 Competitors questionnaire.

²⁰ Non-confidential response by a customer.

²¹ Responses to Q17 of Q1a Customers questionnaire.

²² Responses to Q21 Q2 Competitors questionnaire.

²³ Responses to Q21 of Q2 Competitors questionnaire.

order to produce robotic cleaners.²⁴ This also acts as a barrier to entry which will be further discussed in the competitive assessment. As a result, not all players that are active in automatic suction cleaners are also active in robotic cleaners. With the exception of the Parties, the opposite is also true. For example, while being a significant player in the market for robotic cleaners, Maytronics has no presence in that of automatic suction cleaners.

- (34) Fourth, the Parties' internal documents consider those product categories differently. For example, Zodiac's [...] management plan clearly differentiates between robotic, pressure and suction cleaners,²⁵ while Fluidra's price determination documents that discuss robotic cleaners do not discuss other types of cleaners.²⁶

4.1.3.1. Conclusion

- (35) The Commission therefore considers that for the purposes of the present case, robotic cleaners constitute a separate relevant product market.

4.1.4. Automatic suction cleaners

- (36) The Commission investigated whether the automatic suction cleaners (different from robotic cleaners) for which the Parties' activities overlap, should be further sub-divided into (i) disc rotation automatic cleaning devices (disc rotation cleaners), and (ii) hydro drive train automatic cleaning devices (hydro drive cleaners). The market investigation indicated that there are a number of demand side substitutability arguments to consider all automatic suction cleaners falling under one single relevant product market definition. However, the relevant product market may be left open with respect to automatic suction cleaners since the Transaction will not raise serious doubts under any segmentation for the following reasons.

- (37) First, competitors responding to the market investigation confirmed the validity of the segmentation,²⁷ but analogous opinion was not prevalent among customers and distributors.²⁸

- (38) Second, there are certain differences between round disc and hydro drive cleaners. For example, disc rotation cleaners are considered to be an old and more entry level technology.²⁹ Also, unlike robotic cleaners, both disc rotation and hydro drive cleaners are connected to the pool system but hydro drive cleaners are generally considered to be more efficient.³⁰ However, the market investigation clearly indicated with respect to the intended use customers and

²⁴ The Parties' responses to Q30 RFI#6.

²⁵ Zodiac's responses to Q6 RFI#4, Constellation – Management Presentation vF2 Pt 1 (p. 24) but also others.

²⁶ Internal documents provided as Fluidra's response to Q51 RIF#9.

²⁷ Responses to Q19 of Q2 Competitors questionnaire.

²⁸ Responses to Q19 of Q1a Customers questionnaire and Q18 of Q1b Distributors questionnaire.

²⁹ Non-confidential minutes of a phone interview with a competitor (18 May 2018).

³⁰ Response to Q18 of Q1b Distributors questionnaire.

distributors generally find disc rotation and hydro drive cleaners to be close substitutes.³¹

- (39) Third, there is price differentiation among these products (disc rotation devices retail from EUR 60 to EUR 250 RRP, while hydro drive cleaners usually retail for about EUR 250 to EUR 600 RRP).³² Similar to robotic cleaners, price differentiation will be further considered as a closeness of competition argument in the competitive assessment.

4.1.4.1. Conclusion

- (40) In the light of the results of the market investigation and taking the other evidence available to it into account, the Commission considers that, for the purposes of the present case, it is not necessary to conclude on the exact scope of the market for automatic suction cleaners, as the Transaction does not raise serious doubts under any plausible alternative market definition.

4.1.5. *Water treatment products*

4.1.5.1. The Parties' view

- (41) The Parties are of the view that all water treatment equipment forms part of a single market. They submit that there is an indivisible continuum made up of a multitude of products from simple dispensers and testing strips at one end, to automatic regulators at the other. They contend that all products meet the same demand and face competition from each other, as well as from the option to manually dispense the chemicals in the pool water, which is the most common method of water treatment in the EEA.³³

4.1.5.2. The Commission's assessment

- (42) There is no Commission precedent defining the market for this segment. In the *Zodiac/PSA* (2004) case, the French authorities took the view that “water treatment products” may amount to a relevant market.³⁴
- (43) Water treatment equipment covers (i) liquid chemical sanitising and dosing equipment such as salt water chlorinators (SWCs), pH and ORP regulators and dosing pumps, (ii) solid chemical sanitising and dosing equipment such as floating dispensers and in-line feeders, (iii) alternative sanitisers using UV, ozone or minerals and (iv) testing and measuring equipment.
- (44) SWCs are liquid chemical sanitising and dosing devices that produce chlorine by electrolysis: salt is added to the pool water and the electrolytic reaction in the SWC’s cell breaks down the salt molecules to generate chlorine. SWCs are an

³¹ Responses to Q19 of Q1a Customers questionnaire.

³² The Parties' response to Q24 RFI#6.

³³ Form CO, par. 194

³⁴ Letter from the French Minister of Economy, Finances and Industry from 9 January 2004: case ZODIAC / PSA (available at: https://www.economie.gouv.fr/files/files/directions_services/dgccrf/boccrf/05_01/a0010009.htm).

alternative to releasing chlorine directly in the pool water by using a dispenser, feeder, pH/ORP regulator or dosing pump. The main advantage of an SWC, compared to chlorine-releasing devices is that there is no need for the user to store and handle chlorine, which is a potentially hazardous chemical that must be handled with care.

- (45) pH regulators are liquid chemical sanitising and dosing devices that are used to keep the pH of the pool water at an optimum level in order to improve the efficiency of the chlorine. These can be combined with SWCs as well as with ORP regulators and dosing pumps.
- (46) ORP regulators are liquid chemical sanitising and dosing devices that are used to keep the chlorine content of the pool water at an optimum level. Some ORP regulators are add-on devices that activate the operation of SWCs or dosing pumps, while others are stand-alone devices with an integrated dosing pump.
- (47) Dosing pumps are liquid chemical sanitising and dosing devices that are used for injecting chlorine or pH-regulating agents. Some dosing pumps have integrated pH/ORP controls, in which case they are a type of pH/ORP regulators.
- (48) Floating dispensers and in-line feeders are solid chemical sanitising and dosing devices that operate through contact between the pool water and with the solid chemical located inside. The water causes the solid chemical to erode and dissolve into the flowing water.
- (49) Alternative sanitisers are devices that use non-chemical technology such as UV, ozone or minerals to eliminate organic matter in the pool as a complement to chlorine releasing or producing devices such as pH/ORP regulators or SWCs. Fluidra's alternative sanitisers use UV technology: the pool water runs across a lamp that generates UV-C rays, which eliminate a wide range of organic matter. Zodiac's alternative sanitisers are copper- and silver-based systems that act as a chlorine complement by partially killing specific organic matter and algae.
- (50) Testing and measuring equipment such as sensors, photometers, thermometers, comparison test kits, test kits boxes, reagents and testing strips are used to measure the water balance of the pool.
- (51) Based on the responses of market participants and on the available evidence, the Commission finds that there are a number of demand and supply side substitutability arguments to support the definition of a relevant product market for all liquid chemical sanitising and dosing devices. This market would comprise salt water chlorinators, pH/ORP regulators and dosing pumps. Based on the results of the market investigation, solid chemical sanitising and dosing devices, alternative sanitisers, and testing and measuring equipment would not be part of such a market.
- (52) First, in terms of demand-side substitutability, liquid chemical sanitising and dosing devices perform the same function of automatically producing or releasing liquid chlorine (sodium hypochloride) to the pool water, allowing accurate gauging and control of chlorine levels. pH/ORP regulators and dosing pumps inject liquid chlorine and corrector fluid into the main pool plumbing, disseminating them through the pool. Mineral or salt water chlorinators turn salt

or minerals added to the pool water into liquid chlorine, which is then released into the pool water.

- (53) Based on the feedback from the market investigation and on information provided by the Parties, the Commission finds that a narrower definition of the market for sanitising equipment is not warranted. A majority of respondents indicated that there is substitutability among all liquid chemical sanitising and dosing devices, i.e. salt or mineral water chlorinators, pH/ORP regulators and dosing pumps.
- (54) Despite their differences, those products are considered to provide water sanitation solutions under similar commercial conditions. A Greek distributor commented: "*liquid chlorine is substitutable perfectly with salt water electrolysis, hydrolysis or magnesium*".³⁵ A Bulgarian distributor stated: "*in terms of water sanitizing, salt chlorinators can be substituted with dosing pumps*"³⁶ and "*pH and ORP controllers can be replaced by dosing pumps*"³⁷. A Spanish distributor said that pH and ORP regulators "*can be replaced by saline chlorinators*".³⁸
- (55) In addition, some of the specific advantages associated with SWCs can be replicated by other liquid chemical sanitising systems. A French distributor explained that the milder type of chlorine produced by SWCs is now also available for use with dosing pumps: "*Les appareils d'électrolyse de l'eau salée fabriquent, entre autres, de l'hypochlorite de sodium. Cet hypochlorite de sodium existe à l'état liquide à la vente et peut être injecté par des pompes doseuses*".³⁹
- (56) As regards specific mineral-based chlorinators such as MagnaPool, which is sold by Zodiac, the market investigation indicated that these are very similar to salt-based chlorinators and should be part of the same market. A French competitor explained: "*A "mineral water" chlorinator is in fact a "low salt" chlorinator in which an electrolysis cell is dimensioned to produce chlorine with a low concentration (<1g/l or 1000 ppm) of salt (Sodium chloride or Magnesium chloride)*".⁴⁰
- (57) Second, as regards the exclusion of solid chemical sanitising and dosing devices from the relevant market for sanitising and dosing equipment, the Commission finds that salt water chlorinators, pH/ORP controllers and dosing pumps are typically more expensive, with average prices above EUR 500, in contrast to average prices well below EUR 500 for solid chemical sanitising and dosing devices such as floating dispensers and in-line feeders.

³⁵ Response to Q12 of Q1b Distributor questionnaire.

³⁶ Response to Q12 of Q1b Distributor questionnaire.

³⁷ Response to Q10.1 of Q1b Distributor questionnaire.

³⁸ Response to Q10.1 of Q1b Distributor questionnaire.

³⁹ Response to Q12 of Q1b Distributor questionnaire.

⁴⁰ Response to Q14 of the Competitors questionnaire.

- (58) In addition, solid chemical sanitising and dosing devices use solid chlorine (calcium hypochloride) in granules or tablets that are dissolved or eroded through contact with the pool water, which does not allow control of chlorine levels with the same accuracy as with liquid chemical sanitising and dosing devices.
- (59) In this respect, for instance a French water treatment competitor stated that *"manual sanitisers are not comparable with automated systems as they have a much lower price, offer much less control over the chlorine content of the water and constantly require the manual addition of chlorine to the dispenser."*⁴¹
- (60) Furthermore, liquid chemical sanitising and dosing systems are devices that are electrically powered and electronically controlled, and are as such technologically very different from solid chemical sanitising and dosing devices, which are simple holding receptacles for chlorine tablets or granules, made by injection moulding.
- (61) Third, as regards the exclusion of alternative sanitisers using ozone, UV or minerals from the relevant market for sanitising and dosing equipment, the Commission finds that alternative sanitation systems do not offer valid alternatives to chemical sanitising and dosing systems.
- (62) Several respondents to the market investigation and market participants in interviews commented that alternative sanitisers cannot substitute chlorine-based systems as none of them can be used independently. A Greek distributor explained that *"no other sanitiser can be considered as an alternative to (electrolysis / hydrolysis / low salt /magnesium) systems 100% because all others either have restrictions in terms of effectiveness or cannot stand alone. They are assistive treatment."*⁴² A competitor explained that alternative sanitisers can merely reduce the overall need for chlorine to some extent but cannot replace the use of chlorine altogether.⁴³ Another competitor commented that as such, sanitisers have no residual effect on the pool water; the pool pump has to operate constantly to ensure sanitation, which is not the case for chemical sanitising and dosing systems. He added that mineral-based sanitisers that use copper and silver have another drawback, in that they release harmful heavy metals in the pool water, and have been known to discolour the hair of pool users.⁴⁴
- (63) As for supply side considerations, mineral/salt water chlorinators, pH/ORP controllers and dosing pumps are devices that either produce or dose the release of liquid chlorine, and are as such technologically very different from alternative sanitisers, which all use non-chlorine-based technologies such as osmosis, mineral ionisation and UV radiation.

⁴¹ Non-confidential minutes of a telephone interview with a competitor (19 March 2018)

⁴² Response to Q15 of Q1b Distributor questionnaire.

⁴³ Non-confidential minutes of a phone interview with a competitor (12 April 2018)

⁴⁴ Non-confidential minutes of a phone interview with a competitor (24 May 2018)

- (64) The market investigation confirmed that mineral-based sanitisers, which are produced by Zodiac (the Nature² range), compete with UV-based sanitisers, which are produced by Fluidra.
- (65) Fourth, as regards the exclusion of testing equipment from the relevant market for sanitising and dosing equipment, the Commission finds that such products are not used for the same purpose as sanitising and dosing equipment. The market investigation did not show an overall majority among respondents to include testing and measuring devices in the same market. Respondents commented that testing and measuring devices serve a different purpose from sanitising and dosing equipment. A French competitor commented: "*Testers are not making any regulation and are not substitutable with any water treatment device.*"⁴⁵ Another French competitor explained: "*Ils permettent de tester mais pas de corriger*".⁴⁶

4.1.5.3. Conclusion

- (66) In light of the above, the Commission therefore considers that for the purposes of the present case, all liquid chemical sanitising and dosing equipment belongs to the same relevant product market, comprising salt water chlorinators, pH/ORP controllers and dosing pumps.
- (67) The Commission also considers that there are indications that solid chemical sanitising and dosing equipment, alternative sanitisers and testing and measuring equipment may belong to separate product markets. However, the question may ultimately be left open as the Transaction does not raise serious doubts, irrespective of the specific market definition.

4.1.6. Pool heating equipment

4.1.6.1. The Parties' view

- (68) The Parties submit that the relevant product market should include all types of pool heating equipment, as end users weigh the pros and cons (upfront cost, energy consumption, environmental impact, maintenance needs, etc.) of alternative heating options.

4.1.6.2. The Commission's assessment

- (69) In a previous case, the Commission observed that pool heating equipment included heat pumps as well as other systems, such as gas and oil-fired burners, solar heaters, electric heaters and heat exchangers.⁴⁷ The Commission also noted that in the examined Member States (France, Spain and Portugal), heat pumps were the most commonly used method to heat pool water, and represented a high proportion (up to 90%) of the total value of the sales of all pool heating equipment. Ultimately, the Commission left the market definition open and

⁴⁵ Response to Q11.1 of Q2 Distributor questionnaire.

⁴⁶ Response to Q11.1 of Q2 Competitor questionnaire.

⁴⁷ M.4772 – *Carlyle/Zodiac Marine*.

assessed the Transaction on heat pumps alone, as the only product where the Parties' activities overlapped.

- (70) The market investigation in this case provided a number of indications pointing towards heat pumps belonging to a separate product market from other heating equipment.
- (71) First, heat pumps present a number of differences affecting how they fulfil their purpose, which may result in different conditions of competition. In particular, distributors of pool equipment observed that, although performing the same function of other pool heating equipment, heat pumps “*used less energy than the others and are totally more ecological friendly*” and “*more effective*”.⁴⁸ Similar views were expressed by competitors and other customers of pool equipment. In this regard, one competitor observed that “*heat pumps are more efficient in relation to electricity consumption*”;⁴⁹ and another noted “*aunque si que pudieran substituirse como se indica, la bomba de calor reúne unas condiciones que las hacen únicas a la hora de calentar el agua de la piscina. Esto dificulta utilizar otros sistemas. Hablo de piscinas residenciales.*”⁵⁰ Finally, one large customer stated “*heat pumps are not substitutable with other heating solutions in terms of intended use, price and running costs*”⁵¹, and another remarked “*I don't know any alternative products to heating pumps with the same efficiency, price and running costs.*”⁵²
- (72) Second, when asked about how their customers may react to a 5-10% price increase of heat pumps, the majority of the competitors who expressed an opinion answered that they believed that their customers would not switch.⁵³ Similar views were provided by general customers, and to a lesser extent by distributors. The competitors answering the Commission's questionnaire further explained that “*in relation to the prices, even if they will increase by 5-10%, efficiency still remains very high*”⁵⁴ and that “*heat pumps are very convenient products*”.⁵⁵ One general customer observed that “*il n'y a pas de solution alternative au chauffage par pompe à chaleur en termes de performance/ coût de fonctionnement*”⁵⁶ and another that “*in case of a higher rate level, heat pumps would be still the most efficient heating method*”.⁵⁷

48 See responses to Q20 of Q1B Distributors questionnaire.

49 See responses to Q22 of Q2 Competitors questionnaire.

50 See responses to Q22 of Q2 Competitor questionnaire.

51 See responses to Q21 of Q1 Customer questionnaire.

52 See responses to Q21 of Q1 Customer questionnaire

53 See responses to Q23 of Q2 Competitor questionnaire.

54 See responses to Q23.1 of Q2 Competitor questionnaire.

55 See responses to Q23.1 of Q2 Competitor questionnaire.

56 See responses to Q22 of Q1a Customer questionnaire.

57 See responses to Q22 of Q1a Customer questionnaire.

4.1.6.3. Conclusion

(73) In the light of the results of the market investigation and taking the other evidence available to it, the Commission considers, for the purposes of the present Decision, that the heat pumps for swimming pools form part of a relevant product market separate from other heating equipment.

4.1.7. *Pool dehumidifiers*

(74) The Parties submit that all dehumidifiers for residential indoor pools form part of a single product market.

(75) They note that the basic functionality and technology used is identical for all pool dehumidifiers, and all leading suppliers of dehumidifiers offer a complete range of consolidated and integrated equipment.

(76) Supply-side substitutability between dehumidifiers of different capacities (measured in litres per hour) is facilitated by the fact that the Parties source key components (such as compressors, fans, evaporators and condensers) from third parties. It is these third-party components that determine the capacity of the dehumidifier. The components are assembled and fitted in the housing and wired up at the Parties' assembly lines. Such assembly lines are highly flexible and it is easy for a manufacturer to use the same assembly line to manufacture dehumidifiers with different capacities.

(77) The Parties also submit that the market may be even broader than pool dehumidification equipment. Most leading suppliers of pool dehumidifiers in the EEA (such as TEDDINGTON, CLIMEXEL (PROCOPI), FAIRLAND, REXAIR, DANTHERM (CALOREX), MENERGA, and KVS) exploit economies of scale by manufacturing both pool and non-pool dehumidifiers.⁵⁸ According to the Parties, from a supply-side standpoint, there is no major difference between non-pool and pool applications.

(78) The Commission considers that, for the purpose of present Decision, the exact scope of the product market can be left open, since the Transaction does not give rise to serious doubts about its compatibility with the internal market, even under the hypothetical narrowest market segmentation (residential pool dehumidifiers).

4.1.8. *Swimming pool pumps*

4.1.8.1. The Parties' view

(79) The Parties claim that all pumps belong to a single relevant product market because of supply side substitution arguments. The Parties' own internal

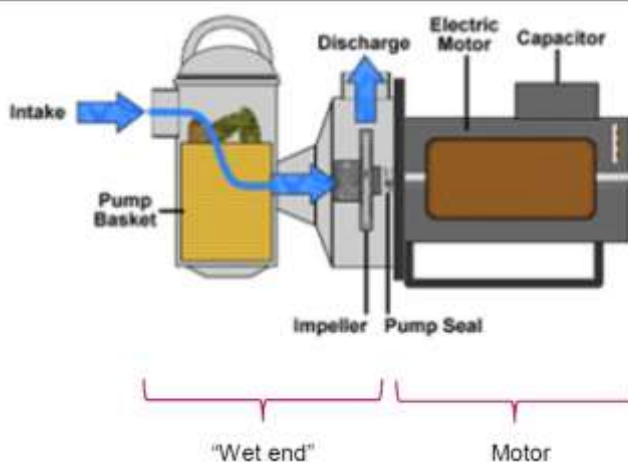
⁵⁸ Dehumidifiers are also used for applications such as extracting moist from basements, kitchens, bathrooms as well as to control moisture in the air in certain industries.

documents⁵⁹ provide indications that all pumps can be further sub-segmented into single, variable and booster pumps.⁶⁰

4.1.8.2. The Commission's assessment

- (80) The Commission has not previously defined the market for swimming pool pumps.
- (81) As noted above, all swimming pool pumps can be sub-segmented into single and variable speed pumps. Single speed pumps operate on a single speed, while variable speed pumps typically have at least two speeds. A variable speed pump is more silent and energy efficient since it operates at lower speed, especially when the pool is not actively used, which is mostly during the night time. Variable speed pumps are also significantly more expensive. The Parties submit that at the moment, the majority of pumps sold in the EEA are single speed pumps.
- (82) As illustrated by Figure 2 below, each pump consists of (i) an electric motor, and (ii) a so-called "wet-end" which is a plastic or metal vessel where the water flows in and out of the pump. The market investigation has revealed that the major price difference (variable speed pumps are up to two times more expensive) is due to a more expensive electric motor.⁶¹ The Parties submit that electric motors are supplied by third party manufacturers and not manufactured by the Parties themselves.

Figure 2 – *Constituent parts of a pool pump*



Source: Form CO

- (83) The Parties claim that the wet-end of both single and variable speed pumps are identical, and that any suppliers which are active in single speed pumps can easily switch to the production of variable speed pumps by simply mounting a

⁵⁹ For example, Zodiac's [Internal Strategy Presentation], 28 January 2016 (response to Q15 RFI#7).

⁶⁰ The parties' activities do not overlap with respect to booster pumps which are principally used to power hydraulic cleaners and in some more niche applications, such as water features.

⁶¹ Non-confidential minutes of a phone interview with a competitor (18 May 2018) and non-confidential minutes of a phone interview with a competitor (25 May 2018).

different motor.⁶² However, the market investigation only partly confirmed this view. In particular, major market players indicated that whilst it is technically possible to switch motors, this is almost never done in such a straightforward manner. The key purchasing criteria for variable speed pumps is noise level rather than electricity savings. In particular, variable speed pumps typically have a bigger wet-end since this reduces noise levels. In addition, variable speed pumps can also be beneficial for the filtration system, as lower speed flowing water allows for better filtration. Finally, other parts of the pump, such as the drive shaft (a rod connecting the motor with the pump impeller) are typically different for different types of pumps.⁶³ Therefore, the evidence available tends to suggest a limited demand and supply substitutability between single and variable speed pumps.

4.1.8.3. Conclusion

(84) The Commission considers that, for the purpose of the present Decision, the exact scope of the product market may be left open, since the Transaction does not give rise to serious doubts about its compatibility with the internal market under any plausible relevant market definition.

4.1.9. *Swimming pool filters*

4.1.9.1. The Parties' view

(85) The Parties claim that all filters belong to a single relevant product market.

4.1.9.2. The Commission's assessment

(86) Generally all filters can be broadly sub-divided by the filtration media they use: sand filters, cartridge filters or diatomaceous earth (DE) filters.⁶⁴ Cartridge filters are generally more expensive if compared to sand media filters because of the more expensive production process. From a customer perspective, there is also limited demand side substitutability since cartridge filters do not require so-called "backwashing" (or rinsing) of a filter, which saves water. The Parties' overlap with respect to cartridge filters is *de minimis*.⁶⁵ Therefore, this overlap is not further analysed.

(87) The Parties' activities principally overlap only with respect to sand media filters, which is the most common type of filter used in the EEA.⁶⁶ Sand filters in turn can be further sub-segmented into injected, blow-moulded, laminated polyester and bobbin-wound. On the basis of information provided by the Parties⁶⁷ it is

⁶² Response to Q5 RFI#9.

⁶³ Non-confidential minutes of a phone interview with a competitor (25 May 2018).

⁶⁴ The Parties submit that their activities do not overlap with respect to DE filters.

⁶⁵ With respect to cartridge filters Zodiac achieved only EUR [...] sales in the whole EU in 2017. The projected sales target for 2018 of this product is EUR [...]. Therefore, this overlap will not be further analysed, since it is clear that Zodiac's overlap will remain *de minimis* in any event.

⁶⁶ Parties' response to Q21 RFI#9.

⁶⁷ Parties' response to Q20 RFI#9.

apparent that all those types of filters use different production technologies. The market investigation provided some indications that those different production technologies also allow different positioning of filters. Namely, polyester laminated filters are considered to be in a high range segment, while blow-molded represents low-end segment.⁶⁸ This differentiation is also supported by the Parties' internal documents.⁶⁹

4.1.9.3. Conclusion

(88) The Commission considers that, for the purpose of present decision, the exact scope of the product market can be left open since the Transaction does not give rise to serious doubts about its compatibility with the internal market, under any plausible relevant market definition.

4.1.10. Wholesale distribution

(89) As noted above, Fluidra is also active in the wholesale distribution of pool equipment products in certain EEA countries.⁷⁰

(90) The Parties submit that Fluidra operates at the wholesale distribution level as a pure distributor, i.e. purchasing and reselling under the third party's brand.

(91) The vertical relationship arising from this Transaction is further assessed in Section 5.3 of this decision.

4.2. Relevant Geographic Markets

4.2.1. The Parties' view

(92) The Parties submit that the geographic scope of the pool equipment market is EEA wide. This is because of the substitutability of demand and strong substitutability of supply for those products across the EEA area at the level of trade at which they operate. This substitutability would be driven by the lack of trade or regulatory barriers between Member States, the relative ease of access to local distributors (wholesalers and retailers), and the homogeneity of the demand for products like pumps, filters, cleaners, heaters and water treatment from all pool owners EEA-wide and the presence of significant brands across multiple Member States.

⁶⁸ Bobbin-wound filters are mostly sold in non-EU jurisdictions. Non-confidential minutes of a phone interview with a competitor (18 May 2018).

⁶⁹ Zodiac's [Internal Strategy Presentation] (p. 12) (provided in response to Q15 RFI#7), indicates that sand media filters can be sub-segmented into "high robustness" and "low robustness" filters. The same document indicates that Zodiac with its polyester laminated filter is active in "high robustness" segment.

⁷⁰ For completeness Zodiac also has some limited and non-core distribution activities in Italy and Germany. The Parties submit that this business does not compete as a general wholesaler but instead is solely used to fill in Zodiac's product line with products which Zodiac does not supply itself. While Fluidra is also active in distribution of pool equipment in those countries, no affected markets result from this overlap.

4.2.2. *The Commission's assessment*

- (93) In one precedent concerning heating equipment, the Commission investigation⁷¹ pointed at national features of the markets for pool equipment, in particular in view of the presence of different market players, significant price differences and differences in consumption habits.
- (94) At the national level, in the *Zodiac European Pools/Piscine Services Anjou* case, the French Competition Authority 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.
- (95) The investigation in the present case provided indications that the markets might be broader than national, in line with the Parties' arguments, for example because of the diminution in price differences across countries. For instance, when asked about price differences for pool equipment across European countries, the majority of distributors replied that, on the basis of their knowledge, these prices were similar across countries.⁷² Similar views were expressed by the general customers and competitors for pool equipment.⁷³ Moreover, as regards sourcing from manufacturers, the majority of the distributors indicated that their most common sourcing pattern of pool equipment was European, i.e. that they buy most of what they need anywhere in Europe.⁷⁴
- (96) However, on balance, there are still elements suggesting a national dimension, which include the existence of different customer preferences and requirements, different distribution channels as well as regulatory and voluntary standards which vary among countries.
- (97) First, while distributors purchase on a European level, when it comes to general customers, a sizeable number of customers responding to the market investigation also stated that they buy what they need within their country.⁷⁵
- (98) Second, the strong national differentiation has been confirmed by manufacturers as well. A large majority of pool equipment competitors stated that customer requirements and preferences differ within the EEA and that they do not access the market through the same distribution channels within the EEA.⁷⁶
- (99) Third, market feedback collected during the market investigation indicated the existence of different national preferences and standards for some categories of pool equipment, especially water treatment products. A market participant, for instance, commented that in France there are regulatory and voluntary industry

⁷¹ M.4772 *Carlyle/Zodiac Marine*.

⁷² See responses to Q24 of Q1b Distributor questionnaire.

⁷³ See responses to Q25 of Q1a Customer and Q25 of Q2 Competitor questionnaires.

⁷⁴ See responses to Q23 of Q1b Distributor questionnaire.

⁷⁵ See responses to Q24 of Q1a Customer questionnaire.

⁷⁶ See answers to Q26 of Q2 Competitor questionnaire.

standards which apply to pool equipment products.⁷⁷ A water treatment competitor said that there is little value in having one standardised product for the entire European market because of the need to comply with different national technical standards and types of usage.⁷⁸

4.2.3. *Conclusion*

- (100) In the light of the market investigation and taking the other evidence available to it into account, the Commission considers that, for the purposes of the present case, the specific geographic market definition can be left open, as it would have no impact on the competitive assessment.
- (101) As regards those markets with respect to which the Transaction does not raise serious doubts, these would not arise even on the basis of an assessment with a narrower national level.
- (102) With respect to robotic cleaners, the Transaction does raise serious doubts regarding its compatibility with the internal market, irrespective of whether the market is defined at the EEA or national level.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

- (103) Under Article 2(2) and 2(3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.
- (104) In this respect, a merger may entail horizontal and/or non-horizontal effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.
- (105) As regards non-horizontal mergers, two broad types of such mergers may be distinguished: vertical mergers and conglomerate mergers.⁷⁹ Vertical mergers involve companies operating at different levels of the supply chain.⁸⁰ Conglomerate mergers are mergers between firms that are in a relationship

⁷⁷ Non-confidential minutes of a phone interview with a pool sector organisation (18 May 2018).

⁷⁸ Non-confidential minutes of a phone interview with a competitor (24 May 2018).

⁷⁹ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008, paragraph 3.

⁸⁰ Non-Horizontal Merger Guidelines, paragraph 4.

which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers).⁸¹

- (106) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.⁸² Additionally, the Commission appraises non-horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Non-Horizontal Merger Guidelines.
- (107) In the present case, the Transaction gives rise to horizontally affected markets in the manufacture and supply of (i) robotic cleaners in the EEA, Sweden, Greece, Spain, Czech Republic, Belgium, Cyprus, Germany, Romania, the Netherlands, Austria, France, Italy, Hungary, Bulgaria, Portugal and Luxembourg, (ii) automatic suction cleaners in the EEA, Portugal, Spain, Belgium, France, Greece, Germany, (iii) sanitising and dosing equipment in the EEA, Spain, France, Portugal, Greece, Italy, Austria, Croatia, Cyprus, Hungary, Poland and the UK, (iv) pool heating equipment, in particular – heat pumps in Spain, Italy, France, Austria, Belgium, Greece and Portugal, (v) pumps in Cyprus, Greece, Spain and the UK, and (vi) laminated polyester filters in Austria, France, Italy, Spain, and the UK.

5.2. Horizontal unilateral effects

5.2.1. Introduction

- (108) The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.⁸³
- (109) Under the substantive test set out in Article 2(2) and 2(3) of the Merger Regulation, mergers that do not lead to the creation or the strengthening of the dominant position of a single firm may also be incompatible with the internal market. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition. This is in view of the more significant consequences that mergers may have on such markets. For this reason, the Merger Regulation provides that "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of*

⁸¹ Non-Horizontal Merger Guidelines, paragraph 5.

⁸² Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

⁸³ In the present case, the Commission has not found evidence that the Transaction would raise serious doubts as regards its compatibility with the internal market with respect to coordinated effects in any of the horizontally affected markets indicated in paragraph (107). During the market investigation, the Commission received no concerns about possible anti-competitive coordinated effects arising from the Transaction.

a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition".⁸⁴

- (110) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.⁸⁵
- (111) Finally, the Horizontal Merger Guidelines describe a number of factors which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, entry and efficiencies.

5.2.2. Brief description of pool equipment markets and players

- (112) Fluidra is a market leader in pool equipment in Europe. Fluidra is a fully vertically integrated player acting at all levels of trade, namely – manufacturing, distribution and even retail.
- (113) There are four global major manufacturers of swimming pool equipment: Fluidra, Hayward, Pentair and Zodiac, known as the "Big Four" competitors in the industry. Those firms are also sometimes referred to as "full line" suppliers since they manufacture and market the entire range of swimming pool equipment that is needed for the installation of a swimming pool. Beside those players, there are a number of smaller competitors referred to as "niche OEMs". Such competitors, such as Maytronics (Israel), do not manufacture the whole range of products but specialize in a particular (usually a high margin) segment such as robotic cleaners.
- (114) Finally, there is a high number of small manufacturers both in Europe and in Asia that usually compete on specific products, such as heat pumps. However, they do not as a rule have sufficient brand reputation or portfolio breadth that would allow them to compete efficiently with the "Big Four" or niche OEM manufacturers.
- (115) With the exception of Fluidra, all manufacturers of swimming pool equipment rely on distributors to reach their end customers. More specifically, within a certain product category (for example, robotic cleaners) each distributor will typically tend to distribute the products of one specific manufacturer only. The pool owners typically do not make purchasing decisions for swimming pool equipment. They will normally rely on the advice given by a pool builder (also

⁸⁴ Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines.

⁸⁵ Horizontal Merger Guidelines, paragraph 26.

known as a "prescriber") or a retailer, who is in fact considered the end customers in this industry.

- (116) The largest pool equipment market in Europe is France, followed by Spain, Italy and Germany. According to the Parties, those markets constitute around 65% of total swimming pool equipment sales within the EEA.

5.2.3. *Robotic Cleaners*

5.2.3.1. Introduction

- (117) The Transaction gives rise to affected markets in robotic cleaners at the EEA level. It also results in 16 affected markets at national level: Sweden, Greece, Spain, Czech Republic, Belgium, Cyprus, Germany, Romania, the Netherlands, Austria, France, Italy, Hungary, Bulgaria, Portugal and Luxembourg.

5.2.3.2. The Parties' view

- (118) The Parties submit that the Transaction will not give rise to competition concerns in the EEA-wide market or any national markets for robotic cleaners, because (i) there are a number of credible competitors left on the market post-merger, (ii) the Parties are not close competitors, (iii) robotic cleaners are constrained by other cleaning equipment, (iv) Internet sales channels will strengthen price competition, (v) powerful distributors face no lock-in effects.
- (119) In addition to the arguments raised in the Form CO, the Parties also submitted a report by economic consultants assessing the competitive effect of the Transaction with respect to robotic cleaners ("RBB Report")⁸⁶ on 13 June 2018. The RBB Report principally claims that the Commission's preliminary concerns are unwarranted because (i) customers will continue to enjoy a large choice of robotic cleaners provided by the Parties' competitors, (ii) Maytronics and Hayward will not have any incentive to follow any price increases, (iii) in case of any hypothetical price increase, customers will revert to automatic suction cleaners, (iv) Hayward and Pentair (a recent entrant) will constrain the Parties, (v) any price increases are likely to incentivize a new entry. Those arguments will be addressed under the relevant sections below.

5.2.3.3. The Commission's assessment

- (120) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to robotic cleaners, both at the EEA and national levels. Based on the results of its market investigation and on the evidence available to it, the Commission finds that (i) there are few effective competitors in robotic cleaners, (ii) other players have a very limited role in the market for robotic cleaners, (iii) private label players would not be sufficient to constrain the Parties post-Transaction, (iv) the Parties compete closely, (v) the Parties will not be constrained post-merger by other types of automatic cleaners, (vi) distributors do not enjoy countervailing buyer power, (vii) Internet sales are not a sufficient price constraining factor, (viii) significant

⁸⁶ RBB Report titled "Zodiac/Fluidra: assessing the competitive effect in the electric cleaner segment", 13 June 2018.

barriers to entry exist with respect to robotic cleaners, (ix) there will be few alternatives left on the robotic cleaners market.

5.2.3.4. Market structure and market shares

- (121) The Parties achieve a significant combined market share in robotic cleaners at both the EEA ([30-40]%) and national levels.
- (122) According to the Parties' estimates, the Transaction gives rise to 16 affected markets for robotic cleaners in the EEA (by value), with the highest combined shares in Sweden ([60-70]%), Greece ([60-70]%), Spain ([50-60]%), Czech Republic ([40-50]%), Belgium ([40-50]%), Cyprus ([40-50]%), Germany ([40-50]%), Romania ([40-50]%), the Netherlands ([40-50]%), Austria ([30-40]%), Italy ([30-40]%), France ([30-40]%), Hungary ([30-40]%), Bulgaria ([30-40]%), Portugal ([20-30]%), and Luxembourg ([20-30]%).
- (123) The market reconstruction completed in this case largely confirmed the Parties' view. At the EEA level, the market reconstruction demonstrated that Maytronics will maintain its market leader position. Currently, Zodiac is the second largest and Fluidra is the third largest player at the EEA level. The Transaction would therefore create two very similarly sized companies, each holding close to [40-50] market share with Hayward being a much smaller player [0-10%]. The market structure would be similar also when considering affected markets at the national level.
- (124) The description of the competitive dynamics in the EEA as described below largely applies to all Member States where affected markets have been identified, including the importance of other players, closeness of competition and barriers to entry. Below some details are provided with respect to the national situation in the four largest pool equipment markets in the EEA.

Impact in France

- (125) In France, the Parties' combined market share is [30-40] in the market for robotic cleaners (2016 by value) with an increment brought by Fluidra of [10-20]%. The only two other significant players are Maytronics ([40-50]%) and Hayward ([10-20]%). The market reconstruction has largely confirmed the Parties' estimates.

Impact in Spain

- (126) In Spain, the Parties' combined market share is [50-60] in the market for robotic cleaners (2016 by value) with an increment brought by Zodiac of [20-30]%. The only two other significant players are Maytronics ([20-30]%) and Hayward ([10-20]%). The market reconstruction has largely confirmed the Parties' estimates.

Impact in Italy

- (127) In Italy, the Parties' combined market share is [30-40] in the market for robotic cleaners (2016 by value) with an increment brought by Zodiac of [10-20]%. The only two other significant players are Maytronics ([40-50]%)

and Hayward ([5-10]%). The market reconstruction has largely confirmed the Parties' estimates.

Impact in Germany

(128) In Germany, the Parties' combined market share is [40-50]% in the market for robotic cleaners (2016 by value) with an increment brought by Fluidra of [5-10]%. The only two other significant players are Maytronics ([40-50]%) and other players ([5-10]%). The market reconstruction has largely confirmed the Parties' estimates.

5.2.3.5. There are only few effective competitors in robotic cleaners

(129) While the Parties claim that there are a number of competitors manufacturing robotic cleaners, the results of the market investigation confirmed that only the Parties, Maytronics and, to a lesser extent, Hayward, can be considered as constraining each other on this market.

(130) The market investigation indicated that the most important drivers when deciding which robotic/automatic suction cleaners to purchase are quality, aftersales, price, and brand for customers, price, quality, warranty and brand according to distributors and quality, price, brand and after-service according to competitors.⁸⁷

(131) This is also consistent with the Parties' internal documents. Internally, the Parties consider that product quality and availability are the two main commercial decision drivers. Brand is indicated to be associated with reliability and quality from the customers' perspective.⁸⁸ Market participants also confirmed that any price increase plays a less important role when dealing with more expensive items, such as robotic cleaners or automatic suction cleaners. Distributors and retailers tend to rather sell a more expensive (and more reliable) item than to address any warranty claims or deal with repairs which may reduce the margin they earn.⁸⁹

(132) Apart from the Parties, the only two other players that can meet those key criteria are Maytronics and Hayward.

(133) Maytronics is the current leader on this market in the EU and will largely retain this position post-merger. While Maytronics is a niche OEM player, it was one of the first companies to introduce robotic cleaners. It is active in all major pool equipment markets in the EU, often holding a major market share.

(134) Next to the Parties and Maytronics, the only other notable player is Hayward. However, as evidenced by market shares and confirmed by the market reconstruction, it is a distant fourth player in this market with its market share in all Member States well below 20%.

⁸⁷ Q59 of Q1b Customers questionnaire, Q54 of Q1b Distributors questionnaire and Q54 of Q2 Competitors questionnaire.

⁸⁸ [Internal Strategy report], p. 84-85 (provided in response to Q3 RFI#7).

⁸⁹ Non-confidential minutes of a phone interview with a competitor (25 May 2018).

(135) The Parties indicated in the Form CO, as well as in other submissions,⁹⁰ that Pentair has announced the launch of one robotic cleaner in late 2017. From publicly available sources provided by the Parties themselves, it is clear that this product targets the entry-level segment.⁹¹ From the Parties' internal documents it is also clear that any of Pentair's products within cleaners are priced at the entry-level.⁹² Therefore, at this stage, Pentair does not enjoy a strong market presence and portfolio breadth enabling it to act as a significant constraint on the Parties.

5.2.3.6. Other players have a very limited role in the market for robotic cleaners

(136) The Parties claim that other players in robotic cleaners such as smaller European providers (for example, Kwadoo, Ubbink, or Mopper) and Asian players (for example, Kokido) constrain the Parties.

(137) The market investigation does not support the Parties' view that they are constrained by those players.

(138) First, only a very limited number of customers and distributors consider that any of those competitors meet the criteria of quality, aftersales, price, and brand.⁹³

(139) Second, these companies are not viewed by customers or competitors (and only by one distributor) as significant players in the robotic cleaners market.⁹⁴ In particular, such players are not viewed by customers,⁹⁵ distributors⁹⁶ and competitors⁹⁷ as credible alternatives to the Parties.

(140) Third, even when these players are mentioned, they are said to be active at the lower end of the market.⁹⁸

(141) Fourth, the fact that such players do not act as a significant constraint is in line with the Parties' own assessment in their internal documents. More generally,

⁹⁰ Additional information provided with the response to RFI#12.

⁹¹ "On the maintenance side, the Pentair Blue Storm will take the spotlight. This new electric pool cleaner is fully automatic. Easy to use, it is offered as **an entry-level product for pool cleaning**" (emphasis added). http://www.eurospapoolnews.com/nouveautes_piscines_spas-en/57022-scp.germany.news.aquanale.cologne.spas.robots.pools.htm (last accessed on 1 June 2018).

⁹² [Internal Strategy report], p. 118.

⁹³ In response to Q60 of Q1a Customers questionnaire, only three customers (out of 19) mentioned Asian suppliers as being as suitable. All of those customers, who mentioned Asian suppliers, did so as the least preferred option. This is even more true for distributors where only one distributor mentioned an Asian supplier as a suitable alternative as the last option (responses to Q55 of Q1b Distributors).

⁹⁴ Responses to Q61 and Q62 of Q1a Customer, Q55 and Q56 of Q2 Competitor and Q56 and Q57 of Q1b Distributor questionnaires.

⁹⁵ Responses to Q70 and Q71 of Q1a Customer questionnaire.

⁹⁶ Responses to Q63 and Q64 of Q1b Distributors questionnaire.

⁹⁷ Responses to Q62 and Q63 of Competitors questionnaire.

⁹⁸ Responses to Q65 of Q1a Customer, Q58 of Q1b Distributors, Q57 of Q2 Competitors questionnaires.

Zodiac's internal documents note that country of origin is directly associated with quality of pool equipment products.⁹⁹ For example:

- a. [Excerpt from Rhône's internal document]¹⁰⁰ [excerpt from Rhône's internal document].¹⁰¹
- b. [Excerpt from Rhône's internal document].¹⁰²

5.2.3.7. Private label players would not be sufficient to constrain the Parties post-Transaction

- (142) The Parties are also engaged in certain private label arrangements with a number of large distributors (for example, [distributor name] European subsidiary) and major DIY European retail chains (such as [distributor names]). Usually the Parties will colour adapt their own products which are exact copies of OEM products sold via traditional sales channels (retailers, distributors and prescribers). According to the Parties' internal documents, Maytronics has similar arrangements (Section 5.2.3.8 below).
- (143) The majority of customers, distributors and competitors consider that private label products do not offer a credible alternative to the Parties' products.¹⁰³
- (144) The market investigation provided indications that private label arrangements serve to catch further demand by major manufacturers and as such are indicative of the market strength of such players.¹⁰⁴
- (145) This is to some degree confirmed by the Parties' internal documents. From the evidence available on file it is clear that at least Zodiac actively manages the sales through such channels. For example, Zodiac's internal document "Product market share analysis" indicates that there is "[excerpt from Zodiac's internal document]."¹⁰⁵

5.2.3.8. The Parties compete closely

- (146) The Parties claim that they are not each other's closest competitors because Zodiac offers products in the high-mid range, while Fluidra offers low-mid range robotic cleaners.¹⁰⁶ However, this statement is not supported by the evidence collected by the Commission, namely through the Parties' internal

⁹⁹ With the exception of heat pumps.

¹⁰⁰ [...].

¹⁰¹ P. 345 of Annex 7 of the Form CO.

¹⁰² [Internal Strategy report].

¹⁰³ Responses to Q72 of Q1a Customers, Q65 of Q1b Distributors and Q64 of Q2 Competitors questionnaires.

¹⁰⁴ Non-confidential minutes with a distributor (16 April 2018).

¹⁰⁵ Provided in response to Q14 RFI#4.

¹⁰⁶ Paragraphs 459 and 461 of the Form CO.

documents, the information provided by the Parties in the course of the investigation and the results of the market investigation.

Differentiation by channel and price point

- (147) First, the Parties' internal documents¹⁰⁷ and the market investigation¹⁰⁸ clearly further differentiate robotic cleaners on the basis of their price points. An interview with a competitor indicated that "*the key is to position every product at the right price point and to have a sufficiently wide range of products, in order to satisfy every demand*".¹⁰⁹ The importance of a wide product range is also supported by the Parties' internal documents. For example, the "Product market share analysis" document provided by Zodiac indicates: "[excerpt from Zodiac's internal document]".¹¹⁰
- (148) This is further evidenced by numerous private label arrangements discussed below.¹¹¹
- (149) The main players in this industry differentiate their robotic cleaners in two ways. The first type of differentiation comes from sales channel which usually constitutes different colour adaptations of an identical OEM product.
- (150) The RBB Report (Section 2) claims that "*Zodiac supplies electric cleaners only under its own brand*" and, unlike Fluidra, does not produce under private label arrangements. This claim is neither supported by the information provided in the course of this investigation nor by Zodiac's internal documents. In the course of the investigation, Zodiac explained that it adapts its products in the following ways:¹¹²
- a. [Zodiac's sales strategy by product].
 - b. [Zodiac's sales strategy by product].
 - c. [Zodiac's sales strategy by product].
- (151) In the EEA, Fluidra is also active in private label manufacturing and derives a sizable income from such activity.¹¹³ This is also supported by arguments developed in the RBB Report (Section 2.1.2).

¹⁰⁷ For example, Zodiac's [...] management presentation (response to Q6 RFI#4, p. 23), Zodiac's commercial strategy documents (FY18 Budget Post Deep-Dive Review, response to Q10 RFI#4, p. 19) or Fluidra's pricing documents supplied in response to Q51 RFI#9.

¹⁰⁸ For example, non-confidential minutes of a phone interview with a competitor (12 April 2018).

¹⁰⁹ Non-confidential minutes of a phone interview with a competitor (13 April 2018). Also, non-confidential minutes of a phone interview with a competitor (12 April 2018).

¹¹⁰ Provided in response to Q14 RFI#4.

¹¹¹ Provided in response to Q14 RFI#4.

¹¹² Response to Q2 RFI#6.

¹¹³ Around EUR [...], Fluidra's response to Q22 RFI#18.

(152) Figures below illustrate how Zodiac, Fluidra and Maytronics approach different sales channels.

[Figures 3, 4, 5 and 6: Zodiac, Fluidra and Maytronics' approach to different sales channel]

(153) The Parties compete closely not only on traditional sales channels at certain price points as demonstrated below, but also for various other sales channels such as DIY, Internet and private label for large customers.

(154) Second, the main players also differentiate their products by price. Interviews with market participants¹¹⁴ and Parties' internal documents¹¹⁵ indicate that robotic cleaners are not a homogeneous market in terms of price. In particular, players active in this market tend to differentiate their products to the largest extent possible and price them broadly according to three categories. In this respect and for the purposes of this Decision, the low-range segment is considered to consist of products priced below EUR 500 RRP, the mid-range segment refers to products priced between EUR 500 – EUR 1000 RRP and the high-range segment at over EUR 1000 RRP.¹¹⁶

(155) From the tables below, it is clear that both Parties focus on the mid- to high-end segments, since the vast majority of their products (in terms of SKUs)¹¹⁷ and turnover is achieved in these two segments. More specifically, the majority of SKUs and revenues for both Parties are concentrated in the mid-range segment.

Table 1 – Allocation of Fluidra's robotic cleaners per price segment

	Number of SKUs	Proportion of SKUs	Turnover	Proportion of Turnover
Low-range	[...]	[...]	[...]	[...]
Mid-range	[...]	[...]	[...]	[...]
High-range	[...]	[...]	[...]	[...]

Source: Fluidra's response to Q36 RFI#6 and Q43 RFI#9

Table 2 – Allocation of Zodiac's robotic cleaners per price segment

	Number of SKUs	Proportion of SKUs	Turnover	Proportion of Turnover
Low-range	[...]	[...]	[...]	[...]
Mid-range	[...]	[...]	[...]	[...]
High-range	[...]	[...]	[...]	[...]

Source: Zodiac's response to Q36 RFI#6

¹¹⁴ Non-confidential minutes of a phone interview with a competitor (12 April 2018). Also, non-confidential minutes of a phone interview with a competitor (13 April 2018).

¹¹⁵ For example, Zodiac's documents "2017 Budget Deep Dive Review" (p.8), "FY18 Budget Post Deep-Dive Review" (p. 19), Constellation – Management Presentation vF2 Pt 2 (p. 23), provided in response to RFI#4.

¹¹⁶ For example, Zodiac's response to Q14 RFI#4 (p. 24), which indicates "lack of OPP in this OPP/MPP focused account (below 1 000€)". Those cut-off points were supported by other market participants. Non-confidential minutes of a phone interview with a competitor (13 April 2018).

¹¹⁷ Stock keeping units.

- (156) The market investigation clearly confirmed this view, with several customers and competitors indicating Zodiac as active primarily in mid- to high-range robotic cleaners.¹¹⁸ The same was confirmed for Fluidra.¹¹⁹
- (157) Besides the positioning of their products, the market investigation confirmed that the Parties do compete closely. When asked to indicate Zodiac's main competitors, customers, distributors and competitors indicated that Maytronics is Zodiac's closest competitor, immediately followed by Fluidra.¹²⁰ In most responses Hayward appeared as a third alternative. When asked to indicate Fluidra's competitors, customers, distributors and competitors responded that these included Zodiac and Maytronics. Again, Hayward was mostly indicated to fall behind the Parties and Maytronics.¹²¹
- (158) This closeness of competition is further demonstrated by the fact that certain large customers delisted the Parties' products because the "*price-quality ratio of the cleaning robots of Fluidra and Zodiac are similar. Fluidra's robots do not give an added value*".¹²²
- (159) Finally, the closeness of competition between the Parties in robotic cleaners is also validated by internal documents. Fluidra's internal documents on pricing determination clearly indicate that first, Fluidra tracks prices only of its main competitors (Zodiac, Maytronics and Hayward),¹²³ and, second, it also shows that in some countries Fluidra's and Zodiac's prices for certain products are very closely aligned:¹²⁴
- a. Document "[Fluidra's internal document]" (p.2), [...].
 - b. Document "[Fluidra's internal document]" (p.3), [...].
 - c. Document "[Fluidra's internal document]" (p.12), [...].
 - d. Document "[Fluidra's internal document]" (p. 7), [...].
 - e. Document "[Fluidra's internal document]" (p.4) [...].
- (160) In its internal documents, Zodiac also views Fluidra as one of its main competitors.¹²⁵

¹¹⁸ Responses to Q65 of Q1a Customers questionnaire and Q57 of Q2 Competitors questionnaire.

¹¹⁹ Responses to Q66 of Q1a Customers questionnaire and Q58 of Q2 Competitors questionnaire.

¹²⁰ Responses to Q61 of Q1 Customers questionnaire, Q57 of Q1B Distributors questionnaire, and Q55 of Q2 Competitors questionnaire.

¹²¹ Responses to Q62 of Q1a Customers questionnaire, Q58 of Q1B Distributors questionnaire, and Q56 of Q2 Competitors questionnaire.

¹²² Non-confidential version of minutes with a customer (21 March 2018).

¹²³ There is only one exception in Italy where a local distributor CPA is mentioned that sells under its own brand Mozzo (Parties' response to Q12b RFI#14).

¹²⁴ Internal documents provided in response to Q51 RFI#9.

¹²⁵ For example, p. 16 of "Product market share analysis" provided in response to Q14 RFI#4.

5.2.3.9. The Parties will not be constrained post-merger by other types of automatic cleaners

- (161) The RBB Report states that consumer demand for robotic cleaners is likely to be elastic, and that customers who choose to buy robotic cleaners also may consider buying other automatic cleaning equipment such as automatic suction cleaners or pressure cleaners.
- (162) In this respect, it should be noted that Zodiac has a very significant presence in the remaining two categories of automatic cleaners: suction cleaners and pressure cleaners. According to the Parties' own estimates, Zodiac has an estimated market share of 40-60% in high-end hydro-drive suction cleaners mostly due to its MX product range.¹²⁶ Hydro drive cleaners due to their positioning can be considered as competing most closely with lower-end robotic cleaners. Zodiac's internal documents also indicate that it holds around [80-90]% market share at the EU level in the pressure cleaner category (which is a non-overlapping product category).¹²⁷ These are the only product segments that can be considered as potentially competing with lower-end robotic cleaners. Because of Zodiac's high market shares in both pressure and hydro-drive cleaners, the Parties will not be constrained to a sufficient degree by those most closely competing product categories post-merger.

5.2.3.10. Distributors do not enjoy sufficient countervailing buyer power

- (163) The Parties argue that, within cleaners, large distributors act as a countervailing buyer power and that the Parties will not be able to raise the prices of automatic residential cleaners post-merger.
- (164) As opposed to the U.S., where the distribution level is very concentrated with one major distributor (PoolCorp), in the EU there are no pan-European distribution players that would account for an equally significant share of distribution for the merged entity post-transaction.
- (165) PoolCorp is the major distributor of pool equipment worldwide. However, it generates only a very limited turnover within Europe. According to PoolCorp's annual report,¹²⁸ PoolCorp through its European subsidiaries generated only around 5% of its turnover in 2017 which represents around EUR 120 million.¹²⁹ In the U.S., PoolCorp is Zodiac's largest customer "[...]".¹³⁰ However, in the EU Zodiac does not depend on any distributor to the same extent, even in the main pool equipment markets (France, Spain, Italy and Germany).¹³¹ The same

¹²⁶ The Parties response to Question 25 of pre-notification RFI#6. Also, see Annex 14 of the Form CO.

¹²⁷ P. 27 of "Product Market Share Analysis" provided in response to Q14 RFI#4.

¹²⁸ SEC 10-k filing, Accessible at <http://ir.poolcorp.com/Profiles/Investor/Investor.asp?BzID=603&from=du&ID=69395&myID=8744&L=I&Validate=3> (last visited on 31 May 2018).

¹²⁹ Ditto, p. 15.

¹³⁰ P. 347 of the Annex 7 of the Form CO.

¹³¹ Annex 27 of the Form CO.

is applicable for Fluidra.¹³² Moreover, in the major European pool equipment markets, Fluidra also acts as a major distributor through its wholesale and Cash & Carry outlets.

- (166) The fact that distributors do not see themselves as capable of constraining significantly the pricing power of the merged entity post-transaction is also confirmed by the fact that several distributors are amongst those who express concerns about the potential effects of the transaction within the Commission's market investigation.¹³³
- (167) Finally, none of the large customers ([...]) are significant enough to constrain the Parties. The Parties' internal documents indicate that the "dealer/retailer" market is fragmented and that even those larger players have no more than 5% ("No player [retailer] has more than 5% market share").¹³⁴

5.2.3.11. Internet sales are not a sufficient price constraining factor

- (168) The Parties claim that the Internet has played a significant role in recent years to increase price competition in cleaners, and robotic cleaners in particular. They further contend that Internet sales are converging with other sales channels and the Parties cannot track their sales online.¹³⁵
- (169) The market investigation has confirmed that to a certain degree, Internet sales have been increasing and play a role within pool equipment sales, especially with respect to cleaners, as they are *plug-and-play* items that need limited assistance for their use. For example, a competitor indicated that Internet sales may erode manufacturer's margins due to the fact that often products sold online will be sold cheaper than through traditional sales channels (i.e. wholesale distributors, specialized retail shops or pool prescribers).¹³⁶
- (170) However, the information provided by the Parties on their own sales channel split and their internal documents indicate that the actual impact of such sales is still limited, and that companies actively manage any such sales.
- (171) First, the penetration of internet sales in Europe is still more limited than in other jurisdictions, and a large part of sales are still made through traditional distribution. The Parties' internal documents¹³⁷ and market participants¹³⁸ indicate that around 30% of cleaners will be sold online, as opposed to 60% in

¹³² Annex 26 of the Form CO.

¹³³ Responses to Q82 of Q1b Distributors questionnaire.

¹³⁴ [Internal Strategy report], p. 105.

¹³⁵ Response to Q11 RFI#3.

¹³⁶ Non-confidential minutes of a phone interview with a competitor of 27 March 2018.

¹³⁷ [Internal Strategy report], p. 108.

¹³⁸ Non-confidential minutes of a phone interview with a competitor of 27 March 2018.

the US.¹³⁹ Conversely, around 50% of cleaners are still sold via traditional sales channels.¹⁴⁰

- (172) Second, the information provided by the Parties, and summarised in the tables below, confirms that Internet sales in the vast majority of cases do not constitute a significant proportion of the Parties' own sales and that the traditional sales are still critical to reach the majority of customers.

Table 3 – Zodiac sales per sales channel of cleaners (EU level)

	Third party wholesale distribution (%)	Direct sales to pool equipment retailers (%)	Direct sales to pool builders / installers (%)	Direct sales to mass market / DIY (%)	Direct sales to internet retailers (%)	Total
Automatic pool cleaners	[...]	[...]	[...]	[...]	[...]	100%
Suction pool cleaners	[...]	[...]	[...]	[...]	[...]	100%
Robotic cleaners	[...]	[...]	[...]	[...]	[...]	100%

Source: Zodiac's response to Q1 RFI#6

Table 4 – Fluidra's sales per sales channel of cleaners (EU level)

	Third party wholesale distribution (%)	Direct sales to pool equipment retailers (%)	Direct sales to pool builders / installers (%)	Direct sales to mass market / DIY (%)	Direct sales to internet retailers (%)	Total
Sales from Fluidra's plants						
Automatic pool cleaners	[...]	[...]	[...]	[...]	[...]	100%
Sales of Fluidra as wholesaler						
Automatic pool cleaners	[...]	[...]	[...]	[...]	[...]	100%

Source: Zodiac's response to Q1 RFI#6

- (173) The information provided by the Parties¹⁴¹ clearly indicates that the situation is not different at the national level, with the exception of Germany, where Internet sales represents a higher share of Zodiac sales, but still remain below 40%.

¹³⁹ Paragraph 487 of the Form CO.

¹⁴⁰ [Internal Strategy report], p. 108.

¹⁴¹ Response to question No. 1 of Request for Information No. 6.

- (174) A sizable proportion of the Parties' turnover within entry-range robotic cleaners are sold through the DIY and Internet sales channels. However, as demonstrated in the table below, this proportion decreases significantly for mid- and high-range robotic cleaners, where the Parties' compete closely.

Table 5 – Distribution of the Parties turnover per sales channel and price segment

	Low range (below EUR 500 RRP)		Medium range (EUR 500-1000 RRP)		High range (over EUR 1000 RRP)	
	Fluidra	Zodiac	Fluidra	Zodiac	Fluidra	Zodiac
Wholesale distributors	[...]	[...]	[...]	[...]	[...]	[...]
Retailers	[...]	[...]	[...]	[...]	[...]	[...]
Prescribers	[...]	[...]	[...]	[...]	[...]	[...]
Mass market/DIY	[...]	[...]	[...]	[...]	[...]	[...]
Internet	[...]	[...]	[...]	[...]	[...]	[...]
Total	100%	100%	100%	100%	100%	100%

Source: Q10 RFI#19

- (175) This is also consistent with the Parties' internal documents which indicate that Internet sales have primarily affected small players in traditional sales channels, and in particular, small retailers. For example, Annex 7 of the Form CO has the following statement (p.345): *"Although dealers and mom & pop retail stores have been hurt by competition from new distribution channels, there has been a limited impact on pool equipment manufacturers given their higher-end product portfolios that require technical services, which these new distribution channels are unable to provide (e.g., difficult to install a pumping system by yourself)."*
- (176) Third, as indicated in Figures 3, 4, 5 and 6 above on private label, all major manufacturers in fact adapt their products to be sold online at least in colour for them to appear different from the ones sold in traditional sales channels.
- (177) Fourth, the Parties can deploy strategies to differentiate online sales to avoid the risk of lower prices influencing sales from the traditional channels. [Zodiac's strategy regarding online sales].¹⁴² [Fluidra's strategy regarding online sales].¹⁴³

5.2.3.12. Significant barriers to entry exist with respect to robotic cleaners

- (178) Entry into the market for robotic cleaners is characterized by extremely high barriers.
- (179) First, technology and in particular IP represents a very significant barrier to entry. This is, in fact, recognized by Fluidra itself.¹⁴⁴ Robotic cleaners are sophisticated products which require a manufacturer to have a significant patent

¹⁴² Responses to Q13 RFI#19.

¹⁴³ Responses to Q13 RFI#19.

¹⁴⁴ "High technological barriers of entry" (p. 8) from an investor presentation in the context of Aqua products acquisition in 2011. Accessible at https://www.fluidra.com/wp-content/uploads/2014/09/AquaProducts_CNMV.pdf (last accessed on 31 May 2018).

portfolio. This is corroborated by the fact that Zodiac licences out some of its patents even to its competitors.¹⁴⁵ Therefore, any new entrant will be faced either with the need to develop its own IP (which is long and costly) or to pay for access through a licence (which makes it dependent on the largest players such as Maytronics, Zodiac or Fluidra).¹⁴⁶

- (180) [40-50]% of Zodiac's overall patent portfolio relates to robotic cleaners, and this number is even higher for Fluidra ([50-60]%). The Parties also pointed out that they cross-licence each other for a significant amount of their patent portfolio. There is also a history of patent litigation between the Parties, mostly coming from Zodiac as the more innovative player.¹⁴⁷ Zodiac also contemplated suing other competitors active in this space, namely – [...].¹⁴⁸
- (181) Second, brand recognition is considered as a key element to entry because robotic cleaners are *plug-and-play* items.¹⁴⁹ As noted above, brands that supply these products in the pool equipment industry are characterised by high quality and reliability.
- (182) Third, companies active in the market for robotic cleaners need a sufficient portfolio of products (for all price points)¹⁵⁰ in order to catch as much demand as possible. Only the Parties and Maytronics have sufficient breadth of portfolio, whereas a new entrant would face difficulties in bringing to market a sufficiently wide portfolio across price points.¹⁵¹
- (183) Fourth, a number of competitors indicated that access to distributors effectively acts as a barrier to entry in this market.¹⁵² The main competitors indicated that despite the fact that there are a large number of distributors per Member State, only a few have sufficient client base and scope to offer their products at a large enough scale. Furthermore, while exclusive distribution arrangements are rare, large distributors tend to distribute products of a particular supplier in a given product line (for example, robotic cleaners). This is also confirmed by the Parties' internal documents, which indicate that "*while the majority of dealers work with 3+ brands, large dealers focus more on the top 3*".¹⁵³
- (184) The RBB Report claims that entry is likely in the space of robotic cleaners. However, this is not supported by the findings of the market investigation. The

¹⁴⁵ Zodiac's response to Q29 RFI#6.

¹⁴⁶ Non-confidential minutes with of a phone interview with a competitor (12 April 2018).

¹⁴⁷ Response to Q29 RFI#6.

¹⁴⁸ Responses to Q36 RFI#7, Q53 RFI#9.

¹⁴⁹ Non-confidential minutes of a phone interview with a competitor (25 May 2018).

¹⁵⁰ As also demonstrated by Zodiac's own entry into low-mid price robotic cleaners.

¹⁵¹ Non-confidential minutes of a phone interview with a competitor (13 April 2018). Also, non-confidential minutes of a phone interview with a competitor (12 April 2018).

¹⁵² Non-confidential minutes of a phone interview with a competitor (25 May 2018), Non-confidential minutes of a phone interview with a competitor (18 May 2018), and Non-confidential minutes of a phone interview with a competitor (13 April 2018).

¹⁵³ [Internal Strategy report], p. 68.

majority of customers (62%) and competitors (43%) do not consider that new entry is likely.¹⁵⁴ In their narrative responses, customers indicated that the following act as barriers to entry; technology, know-how, brands, distribution, high IP costs, and market saturation. Competitors mentioned IP, access to distribution, technology, service structure, reliability, strategy, and expenses to develop and market share of existing suppliers as the main barriers.

5.2.3.13. There will be few alternatives left on the robotic cleaners market

- (185) The Parties claim that since robotic cleaners are *plug-and-play* items, switching is deemed to be comparatively easier than for other pool equipment products.
- (186) This view is confirmed by the majority of customers, who indicated switching to be easy.¹⁵⁵ However, the feedback from distributors indicated that it is difficult to make customers switch.¹⁵⁶ Competitors were also of the same view.¹⁵⁷
- (187) Irrespective of the ease of switching for robotic cleaners compared to other pool equipment products, after the Transaction, there will only be one large competitor besides the merged entity, with a significant portfolio of products - namely Maytronics, followed by Hayward as a distant third. Therefore, even if switching would be easier than for other pool equipment products, it would not exclude the effects of the Transaction brought about by the significant increase in market concentration post-merger.

5.2.3.14. Conclusion

- (188) In light of the above considerations and taking the results of the market investigation into account, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market with respect to market for robotic cleaners, irrespective of whether these are assessed at national level or at EEA level.

5.2.4. *Automatic suction cleaners*

5.2.4.1. Introduction

- (189) The Parties estimate that the Transaction technically gives rise to an affected market with respect automatic suction cleaners at the EEA level, where the Parties' combined market share (by value) in 2016 amounted to [20-30]% with a moderate increment of [0-5]% brought by Fluidra. Moreover, at the national level, the Transaction results in six affected markets for automatic suction cleaners (by value), with the highest combined share in Portugal (combined: [40-50]%; Zodiac: [40-50]% + [0-5]% Fluidra), Spain (combined: [30-40]%; Zodiac [30-40]% + Fluidra [5-10]%), Belgium (combined: [30-40]%; Zodiac [30-40]% + Fluidra [0-5]%), France (combined: [30-40]%; Zodiac [30-40]% + Fluidra [0-5]%),

¹⁵⁴ Q66 of Q1a, Q58 of Q2 Competitor questionnaire.

¹⁵⁵ Q67 of Q1a Customer questionnaire.

¹⁵⁶ Q60 of Q1b Distributor questionnaire.

¹⁵⁷ Q67 of Q2 Competitor questionnaire.

Greece (combined: [30-40]%; Zodiac [30-40]% + Fluidra [0-5]%), Germany (combined: [20-30]%; Zodiac [20-30]% + Fluidra [0-5]%).

- (190) A further sub-segmentation by automatic suction cleaner type (round disc or hydro drive) does not result in any affected market at the EEA level by value in 2016. At the national level, further segmentation gives rise to four affected markets for disc rotation suction cleaners: Belgium (combined share: [20-30]%), Italy ([20-30]%), Portugal ([40-50]%), and Spain ([20-30]%). In the majority of Member States the overlaps are modest (20-30% combined share) with Portugal being the exception where the Parties' combined market share by value reaches [40-50]% with Fluidra bringing a moderate increment of [5-10]%. The market reconstruction indicated that the Transaction would result in only two affected markets with a lower combined market share (Spain: combined share by value of [20-30]% and Italy: combined [20-30]%).
- (191) With respect to hydro drive cleaners, the Transaction results in two affected markets for hydro drive suction cleaners: Spain (combined: [50-60]%; Zodiac [40-50]% + Fluidra [5-10]%) and Greece (combined: [40-50]%; Zodiac [40-50]% + Fluidra [0-5]%) on the basis of the Parties' estimates. The market reconstruction largely confirmed this view.
- (192) The market reconstruction confirmed that the market for automatic suction cleaners, and especially for round disc cleaners, is more fragmented.

5.2.4.2. The Parties' view

- (193) The Parties submit that the Transaction will not give rise to competition concerns in any affected market, irrespective of whether all automatic suction cleaners are considered together or whether each category is analyzed separately. In particular, they point out that (i) their combined market shares are moderate in the vast majority of cases, (ii) there are a large number of credible, mostly Asian, suppliers that will continue to exert a competitive constraint over the Parties post-merger, and (iii) the Parties are not close competitors.

5.2.4.3. The Commission's assessment

- (194) For the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to automatic suction cleaners, under any possible segmentation.
- (195) First, in the majority of Member States, the Parties' combined market share is moderate, and a number of competitors will remain in the market post-merger. In particular, Hayward and Pentair both supply automatic suction cleaners within the EEA. Furthermore, the Commission's market reconstruction was able to confirm that a number of Asian suppliers market products in the EEA under private labels or their own brands.
- (196) Second, Fluidra is a smaller player within the market for automatic suction cleaners. In 2016, its turnover in automatic suction cleaners was EUR [...] million (of which around [...] was within round disc cleaners, and around [...] within hydro drive cleaners). As a result, market shares increments are limited, even in those markets where combined shares are higher.

Disc rotation cleaners

- (197) According to the information provided by the Parties, the highest combined share for round disc cleaners is achieved in Portugal ([40-50]%) with an increment of [5-10]%, equating to EUR [...] million in turnover in 2016. However, the market reconstruction exercise confirmed that the only two affected markets are in Spain and Italy, and that these are both below 30% in combined market share.
- (198) As regards round disc cleaners, market participants also indicated that there are a large number of copies of such products manufactured by Asian suppliers.¹⁵⁸
- (199) According to evidence from the market investigation, besides being a small player, Fluidra supplies only a lower-end range of round disc cleaners.¹⁵⁹ Therefore, the Parties do not compete closely with respect to round disc cleaners, and will continue to face competition from other players in the low-end space where Fluidra competes.

Hydro drive cleaners

- (200) With respect to hydro drive cleaners, the only non *de minimis* overlap exists in Spain (combined share of [50-60]%) where the overlap brought by Fluidra is [5-10]% (equivalent to EUR [...] in 2016).
- (201) Also as regards hydro-drive cleaners, Fluidra's presence is limited, as it does not manufacture its own hydro drive cleaners but distributes a model from [...] on a private label basis.¹⁶⁰ Moreover, the merged entity will continue to face competition from other players.
- (202) First, there are a number of other competitors active on automatic suction cleaners in Spain, including Pentair ([20-30]%) or Hayward ([20-30]%), whose market shares are non-negligible. The relative strength of these competitors was confirmed by the market reconstruction. Furthermore, other players are present such as Intex with entry level cleaners.
- (203) Second, the Transaction will not eliminate an important competitive force. Beside its limited share, Fluidra only distributes [...] products on a private label basis, and is not considered in the industry to have a significant position or technological advantage as regards these products.¹⁶¹
- (204) Third, the Parties do not compete closely. The automatic suction cleaner market is differentiated, with products distributed across a number of different price points. For instance, according to the Parties' internal documents,¹⁶² there is an (i) entry-level of EUR <100 RRP where most round disc cleaners are positioned,

¹⁵⁸ Non-confidential minutes of phone interview with a competitor (18 May 2018).

¹⁵⁹ For example, Astralpool Mamba XS and Astralpool Mamba.

¹⁶⁰ Paragraph 455 of Form CO.

¹⁶¹ Non-confidential minutes of phone interview with a competitor (13 April 2018).

¹⁶² Zodiac's response to Q14 RFI#4 (p. 28).

a (ii) mid-level of EUR 100-300 RRP, and (iii) high-end products with prices of above EUR 300 RRP, consisting mainly of hydro drive cleaners.

- (205) While, as discussed above, Fluidra is mostly active in the low-end segment of disc rotation cleaners, where numerous players exist, as regards the hydro drive segment, Fluidra only has one hydro drive cleaner model which it outsources from [...], as opposed to Zodiac which is primarily active in the high-end segment of the market, with its MX range consisting of more products and SKUs.

5.2.4.4. Conclusion

- (206) For the reasons set out above, the Transaction does not raise serious doubts as regards its compatibility with internal market with respect to market automatic suction cleaners, irrespective of whether the market is considered as a whole or if assessed on the basis of separate markets for disc rotation cleaners and hydro drive cleaners.

5.2.5. *Water treatment products*

5.2.5.1. Introduction

- (207) As regards water treatment, with respect to the relevant market for sanitising and dosing equipment, the Transaction gives rise to affected markets in the EEA and at national level, particularly in Spain, France, Portugal, Greece, Italy and Austria, where the Parties have meaningful overlaps and/or presence. In other Member States, namely Croatia, Cyprus, Hungary, Poland and the UK, the Parties' overlaps and/or presence are minimal.

5.2.5.2. The Parties' view

- (208) The Parties claim that the Transaction would not result in a significant impediment to effective competition in the relevant market for sanitising and dosing equipment on the grounds that (i) their shares of supply and share of supply increment are moderate, (ii) the Parties are not close competitors, (iii) there is a sufficient number of other competitors without capacity constraints, (iv) there are powerful distributors facing no lock-in effects, and (v) entry barriers are low.

5.2.5.3. The Commission's assessment

- (209) For the reasons set out below, the Commission considers that in the market for sanitising and dosing equipment comprising mineral/salt water chlorinators, pH and ORP regulators and dosing pumps, the Transaction does not raise serious doubts, irrespective of whether the market is assessed at the EEA level or at the level of the 11 affected national markets.

5.2.5.4. Market structure and market shares

Table 6 - EEA market shares for sanitising and dosing equipment in 2016

Company	2016	
	Value (EUR millions)	Value (%)
Zodiac	[...]	[5-10]%
Fluidra	[...]	[10-20]%
Combined	[...]	[20-30]%
Pool Technologie	[...]	[5-10]%
Hayward	[...]	[0-5]%
Pentair	[...]	[0-5]%
Autopilot	[...]	[0-5]%
Others	[...]	[60-70]%
Total	88.76	100%

Source: Parties' estimates supplied in reply to Q14 of RFI19

(210) In the relevant market for sanitising and dosing equipment comprising salt/mineral water chlorinators, pH and ORP regulators and dosing pumps, the Parties have a combined EEA share by value of [20-30]% in the EEA (Zodiac [5-10]% + Fluidra [10-20]%) and the Transaction gives rise to six affected national markets where the Parties' overlaps and presence are not minimal, namely Spain ([40-50]%; Zodiac [5-10]% + Fluidra [30-40]%), France ([20-30]%; Zodiac [5-10]% + Fluidra [10-20]%), Greece ([60-70]%; Zodiac [10-20]% + Fluidra [50-60]%), Portugal ([40-50]%; Zodiac [20-30]% + Fluidra [20-30]%), Italy ([30-40]%; Zodiac [10-20]% + Fluidra [10-20]%) and Austria ([40-50]%; Zodiac [10-20]% + Fluidra [30-40]%), and five affected national markets where the Parties have minimal overlaps and presence, namely Croatia ([30-40]%), Cyprus ([40-50]%), Hungary ([30-40]%), Poland ([30-40]%) and the UK ([20-30]%). Our market reconstruction overall confirmed the share of supply data provided by the Parties.

(211) At EEA level, Fluidra and Zodiac are currently the strongest and second strongest players, but their combined market share remains moderate at [20-30]%. According to the Parties' estimates, the next player at EEA level is SWC specialist Pool Technologie at [5-10]%. However, this company is viewed as a leader in the relevant market in Europe. The following comment was made by a competitor with regard to Pool Technologie: *"The company is the biggest manufacturer of salt water chlorination systems ('SWC'), PH control systems and dosing systems in Europe; in this market segment, it is also superior to some of the big players, such as Zodiac, Pentair or Hayward."*¹⁶³ Pool

¹⁶³ Non-confidential minutes of a phone interview with a competitor (2 May 2018).

equipment generalist Hayward's EEA share is just [0-5]%, but this does not include Spanish water treatment suppliers Sugar Valley and Kripsol, which the company acquired in 2016. In addition, Hayward's market share is significantly higher in most of the affected markets. As for Pentair, it has an EEA share of [0-5]% and a more significant presence in certain countries such as Italy. Maytronics has only recently entered into SWC in Europe, so its market shares are not yet reflected in the current data. The rest of the market comprises of various other, mostly European, players, with a more limited share at EEA level but a stronger presence in certain Member States. Such players include water treatment specialists CCEI, BSV, Bayrol, SEKO, Innowater and Nextpool, amongst others.

- (212) In a separate market for alternative sanitisers, the Parties' combined market share is minimal. Zodiac's share of supply is less than [0-5]% in all countries where it is present. Fluidra's total sales of residential UV-C systems in the EEA are very limited, and an overlap with Zodiac would only arise in Italy and Spain, where Fluidra's share of supply would also be below [0-5]%.

5.2.5.5. There are many alternative suppliers of sanitising and dosing equipment

- (213) The Commission's market investigation and documents received from the Parties confirmed that, even in those national markets for sanitising and dosing equipment where their shares are higher, the Parties face competition from a number of alternative competitors.
- (214) First, there are a number of different competitors active in the affected markets. These include other global multi-product players such as Hayward and Pentair, international water treatment specialists such as the Australian Davey, and European specialists such as the Spanish BSV and Innowater, the French Pool Technologie and CCEI, the Italians SEKO and Emec and the German Bayrol.
- (215) Second, not only are those competitors active at EEA level, but also in the Member States where the Transaction brings about the most significant market share increments, even if there are elements of differentiation. Based on the findings of the market investigation, the Commission considers that manufacturers active in France are particularly strong in SWCs, while manufacturers active in Italy are strong in pH and ORP controllers, both as OEM suppliers and under their own brands. For instance, a French competitor stated that *"France is the largest market for swimming pool equipment in Europe and the second largest in the world, and smaller manufacturers play a very important role. Pool Technologie is the biggest independent manufacturer of SWCs, followed by more than 10 other players, such as CCEI, Regul Electronique, Bio-pool, Corelec and Nextpool. 90% of the manufacturers of SWCs in Europe are French, while the remaining 10% are Italian, Portuguese, and Spanish"*.¹⁶⁴ The same competitor noted in relation to SWCs and pH and ORP regulators that *"The market is very competitive. So customers request all together price, quality, reliability and strong support"*. Another French competitor commented that *"The production of pH/ORP controllers sold in*

¹⁶⁴ Non-confidential minutes of a phone interview with a competitor (2 May 2018).

Europe is dominated by industrial players who are also active in other sectors, many of whom are located in the region of Bari [Italy]".¹⁶⁵

- (216) Third, among competitors, a clear majority of respondents to the market investigation confirmed the competitive constraint provided by both global and European competitors. There are both global multi-product players such as Hayward and Pentair and water treatment specialists such as Pool Technologie, Bayrol, Innowater, BSV, CCEI, who are able to offer credible alternatives to Zodiac and Fluidra.¹⁶⁶
- (217) Fourth, among suppliers, the relevance of competition including from national players is confirmed by internal documents. A Fluidra strategic plan on SWCs, for instance, confirms the relevance of competition coming from national players: "*Beyond the big 3 players, strong local competitors in core markets such as France (Pool Tech. & NextPool), Spain (BSV, Sugar Valley), [...]*".¹⁶⁷
- (218) Fifth, from the perspective of customers, the relevance of competition including from national players in water treatment in Europe, including in the affected markets, is also borne out by customers' responses to the market investigation.¹⁶⁸
- (219) In addition, evidence submitted by the Parties, and confirmed in the market investigation, indicates that the European market for sanitising and dosing equipment has seen recent entry or expansion by a number of significant competitors.
- a. In November 2016 Maytronics announced the launch of an SWC product for the EEA market. Information obtained by the Commission indicates that an SWC under the product name Clever Pure was included in Maytronics' 2017 product catalogue for France.¹⁶⁹ A European water treatment specialist stated that Maytronics has sourced SWCs from them on an OEM basis since early 2017, but that sales have been limited so far, as Maytronics is still at a learning stage with regard to the water treatment market.¹⁷⁰ Maytronics confirmed that its current portfolio includes water treatment products.¹⁷¹ Its French subsidiary's 2017 annual report indicates that the effective launch of the SWC product in terms of volume is planned for 2018.¹⁷²
 - b. Hayward recently expanded its presence in water treatment in Europe through the acquisition of Spanish companies Sugar Valley and Kripsol in 2016. Hayward explained that these acquisitions were driven by the need

¹⁶⁵ Non-confidential minutes of a phone interview with a competitor (24 May 2018).

¹⁶⁶ Responses to Q44, Q45, Q50, Q51 of Competitors questionnaire.

¹⁶⁷ Response to Q60 RFI#4 "SWC Strategic Plan" (p. 2).

¹⁶⁸ Responses to Q45, Q46, Q55, Q56 of Customers questionnaire.

¹⁶⁹ See news item on the website of French swimming pool trade journal *Activité Piscine* available at <http://activite-piscine.com/news/electrolyseur/>. (last accessed on 20 June 2018).

¹⁷⁰ Non confidential minutes of a phone interview with a competitor (24 May 2018).

¹⁷¹ Non confidential minutes of a phone interview with a competitor (13 April 2018).

¹⁷² The annual report is available at http://www.mginternational.fr/PDF/Rapport_financier_2017.pdf.

to tailor its water treatment product portfolio to certain consumer preferences that are typical of the European market, namely for SWCs to have integrated pH and ORP controls and plastic outer casing. Those acquisitions will allow Hayward to have a product offer that is better targeted at European consumers, which the company anticipates will enable it to expand its presence in the European market in the coming years.¹⁷³ This is already reflected in the market investigation, as Hayward is the player second-most often cited by competitors as the closest competitor to Zodiac and Fluidra respectively in SWCs.¹⁷⁴

- c. Pentair currently has a modest market share at EEA level but is growing in the market for salt water chlorinators and has already established a significant presence in countries such as Italy. The company is said to be gaining a significant market share in salt water chlorinators in Europe.¹⁷⁵ Pentair was cited by several respondents as a close competitor to both Zodiac and Fluidra in the market for sanitising and dosing equipment.¹⁷⁶
 - d. Bayrol, a German water treatment supplier specialising in pool chemicals, entered the SWC market in 2015 with the release of the Naturally Salt range of products, and the Salt Relax SWCs models. The company has managed to take market share in France by leveraging its existing pool chemicals sales force.¹⁷⁷
- (220) Sixth, the Parties also face competition from Asian competitors, although these are not regarded by respondents to the market investigation as credible alternatives to the Parties in water treatment in Europe.¹⁷⁸ The Commission was, in particular, able to confirm European sales in water treatment for three companies, namely Laswim, Intex and Emaux. The presence of Asian players both as own-brand and OEM suppliers is estimated at 20% of SWC products sold in Europe.¹⁷⁹

5.2.5.6. The Parties are close competitors but face competition from a number of other suppliers.

- (221) Based on evidence provided by the Parties and on the results from the market investigation, the Commission has found that, while Zodiac and Fluidra are seen as two of several competitors in the mid-range segment, Fluidra seems to be more focused on entry-level products.

¹⁷³ Non-confidential minutes of a phone interview with a competitor (18 May 2018).

¹⁷⁴ Responses to Q39 and Q40 of Competitors questionnaire.

¹⁷⁵ Non-confidential minutes of a phone interview with a competitor (25 May 2018).

¹⁷⁶ Responses to Q40 and Q41 of the Customers questionnaire; responses to Q39 and Q40 of the Distributors and Competitors questionnaires.

¹⁷⁷ See article "Bayrol passe au sel" on the website of French trade journal *Activité Piscine*, available at <http://activite-piscine.com/news/bayrol-passe-au-sel/>. (last accessed on 20 June 2018).

¹⁷⁸ Responses to Q49 of Customers questionnaire and Q 46 of Distributors and Competitors questionnaire.

¹⁷⁹ Table 101 of the Form CO.

- (222) An internal Fluidra document on SWC strategy shows that Zodiac is one of the competitors against whom Fluidra benchmarks its SWC offer.¹⁸⁰ However, the same document shows that Fluidra's SWC offer is also benchmarked against Hayward, Pentair, Pool Technologie and Sugar Valley.¹⁸¹
- (223) In terms of price positioning, the market investigation showed that both Zodiac and Fluidra are considered to be well placed in the mid-range price segment in SWCs and pH and ORP regulators.¹⁸² However, respondents cited seven other competitors as being equally well positioned in the mid-range price segment in water treatment, namely international players Hayward, Pentair and Davey and European specialists Bayrol, BSV, CCEI and Pool Technologie. Some respondents pointed to the Parties' strength in the premium segment, where Pentair and Bayrol were also cited as being well positioned.¹⁸³
- (224) A product comparison between the top-five selling SWCs provided by the parties showed that Fluidra had closely competing products for each of Zodiac's best-selling SWC and pH/ORP products.¹⁸⁴ However, the same product comparison shows that nearly all of Zodiac's closest competing products for Fluidra's top-five best-selling SWCs and pH and ORP regulators are positioned at at least twice the price of the Fluidra products.¹⁸⁵ This would suggest that Fluidra, despite its presence in the mid-range and premium segments, has more of a focus on entry-level price points.

5.2.5.7. Barriers to switching are not high

- (225) On the basis of the results of its market investigation and feedback from calls with market participants, the Commission has found that overall, barriers to switching are not high, notably because brand awareness among end users is limited.
- (226) The market investigation indicated limited barriers to switching: only a minority of customers and distributors consider switching from one of their main suppliers of SWCs/pH and ORP regulators to another to be difficult.¹⁸⁶ However, most competitors said that they face barriers when trying to persuade customers to switch from other manufacturers' water treatment products to their own.¹⁸⁷

¹⁸⁰ Response to Q60 RFI#4 [Fluidra's Internal Document] (p. 28).

¹⁸¹ Response to Q60 RFI#4 [Fluidra's Internal Document] (p. 28 and 29).

¹⁸² Responses to Q41 and Q47 of Customers questionnaire; responses to Q42 and Q50 of the Distributors and Competitors questionnaires.

¹⁸³ Responses to Q42 and Q50 of Customers questionnaire, and Q41 and Q47 of Distributors and Competitors questionnaires.

¹⁸⁴ Annex 19 of the Form CO.

¹⁸⁵ Annex 20 of the Form CO.

¹⁸⁶ Responses to Q44 and Q52 of Customers questionnaire, and Q43 and Q49 of Distributors questionnaire.

¹⁸⁷ Responses to Q43 and Q49 of the Competitors questionnaire.

- (227) The Commission's investigation confirmed that retailers and pool builders play an important role in deciding what type of water treatment system is purchased. End users of water treatment systems tend to rely on the recommendations made by the pool professional. This is because such systems need to be installed as part of the pool's circulation system and involve diligent and careful control of chemical substances. A Greek distributor who purchases all of his salt and mineral water chlorinators from Zodiac stated that he could source his products from an alternative provider if necessary: "[...] even though [Distributor] has had a long-standing commercial relationship with Zodiac, from which it sources the bulk of its products, it is confident it could switch to an alternative provider if needed."¹⁸⁸
- (228) The market investigation confirmed that customers' choices in water treatment are not driven by brands: none of the customers or distributors responding to the questionnaire cited product brand as one of the main criteria in deciding what SWC/pH-ORP product to purchase.¹⁸⁹ Prescribers such as pool builders and pool equipment retailers seem to be autonomous in the product choices they recommend to customers: their choices seem to be guided primarily by product characteristics such as quality, reliability and price. The Commission considers that prescribers' ability to encourage end users to switch to alternative suppliers gives them a degree of countervailing power vis-à-vis suppliers.

5.2.5.8. Potential entrants face low barriers

- (229) The Commission has found that barriers to entry are low, mainly because water treatment devices are not highly technological products and economies of scale are limited.
- (230) Feedback from market participants confirmed that water treatment products are not seen to be IP or R&D intensive: respondents to the market investigation did not mention technology or IP protection as barriers to entry.¹⁹⁰ This is reflected by the Parties' IP portfolios: Fluidra holds no patents on SWCs while Zodiac's SWC patents represent only [0-5]% of its overall patent pool.¹⁹¹ IP protection seems to be limited across the industry: a French competitor stated that there has been no significant product innovation in the last 15 years.¹⁹² Product innovations seem to have been more incremental than fundamental, with the latest products mainly offering connectivity with pool automation systems, [...].¹⁹³
- (231) In addition, market participants confirmed that the production of SWCs and pH-ORP regulators is a relatively simple process consisting in the assembly of readily available components. A French competitor stated: "*The manufacturing*

¹⁸⁸ Non-confidential minutes of a phone interview with a distributor (14 March 2018).

¹⁸⁹ Responses to Q38 of Customers questionnaire, and Q37 of Distributors questionnaire.

¹⁹⁰ Responses to Q10 of Customers, Distributors and Competitors questionnaires.

¹⁹¹ Responses to Q19 and Q30 of RFI#6.

¹⁹² Non-confidential minutes of a phone interview with a competitor (24 May 2018).

¹⁹³ Annex 30 of the Form CO;; Response to Q60 RFI#4 "[Internal Strategy Document]" (p. 10).

of a chlorinator is rather straightforward, as the technology involved can be compared to that of a battery charger. [...] A pH regulator is also a relatively simple piece of equipment, which consists of a pH sensor, an electronic control board and a dosing pump."¹⁹⁴

- (232) In terms of economies of scale, market participants have confirmed that these are not very relevant in water treatment as many small companies seem to be operating successfully across Europe. A French competitor stated that *"economies of scale play a limited role in the European market for water treatment because of its complexity: it is a market that requires a high level of differentiation and diversity."*¹⁹⁵

5.2.5.9. Impact of the Transaction in individual Member States

- (233) The Commission notes that the Transaction would give rise to affected markets for sanitising and dosing equipment comprising salt/mineral water chlorinators, pH and ORP regulators and dosing pumps in six countries where the Parties have meaningful overlaps and/or presence, namely Spain, France, Portugal, Italy, Greece, Austria, and in four countries where their overlaps and/or presence are minimal, namely Croatia, Cyprus, Hungary, Poland and the UK. The Parties' combined market share does not exceed 50% in any of the affected markets, except in Greece.

- (234) The description of the competitive dynamics in the EEA as described above largely applies to all Member States where affected markets have been identified.

- (235) In addition, a majority of respondents to the market investigation did not reply that they expect the Transaction to have any negative impact on the market for sanitising and dosing products in their country.¹⁹⁶ A French water treatment competitor commented: *"Overall [competitor's name] does not think the merger between Zodiac and Fluidra will raise any concerns for them but will rather create new opportunities. It believes it could be a positive development for the sector that a European player is able to compete better with the global leaders."*¹⁹⁷

- (236) In the paragraphs below some details are provided with respect to the national situation in the affected markets in the EEA.

5.2.5.9.1. Spain

- (237) In Spain the Parties' combined market share comes to [40-50]% in the market for sanitising and dosing equipment. The bulk of this share comes from Fluidra ([30-40]%) with a limited increment from Zodiac ([5-10]%), which is only the fifth player in the Spanish market. Therefore the Transaction will not

¹⁹⁴ Non-confidential minutes of a phone interview with a competitor (24 May 2018).

¹⁹⁵ Non-confidential minutes of a phone interview with a competitor (24 May 2018).

¹⁹⁶ Responses to Q85 of Competitors Questionnaire, Q83 of Distributors questionnaire and Q92 of Customers questionnaire.

¹⁹⁷ Non-confidential minutes of a phone interview with a competitor (24 May 2018).

eliminate a major competitive force. The merged entity will continue to face competition from other players whose market shares equal or exceed the increment brought by Zodiac, namely Hayward ([10-20]%), BSV ([10-20]%) and Innowater ([5-10]%).

5.2.5.9.2. France

- (238) As for France the Parties' combined market share amounts to [20-30]% (Zodiac [5-10]% + Fluidra [10-20]%) in the relevant market for sanitising and dosing equipment. The merged entity will continue to face competition from other players with non-negligible market shares, namely Pool Technologie, whose market share ([10-20]%) exceeds the increment brought by Zodiac, and Hayward ([5-10]%).

5.2.5.9.3. Greece

- (239) In the case of Greece the Parties' combined market share totals [60-70]% (Zodiac [10-20]% + Fluidra [50-60]%) in the relevant market for sanitising and dosing equipment. According to the Commission's market reconstruction, the merged entity will continue to face competition from other players with non-negligible market shares in SWCs, which represent [80-90]¹⁹⁸ of the relevant market in Greece, namely BSV ([10-20]%) and Pool Technologie ([5-10]%).

5.2.5.9.4. Portugal

- (240) With regard to Portugal, the Parties' combined market share comes to [40-50]% (Zodiac [20-30]% + Fluidra [20-30]%) in the relevant market for sanitising and dosing equipment. According to the Commission's market reconstruction, the merged entity will continue to face competition from other players with non-negligible market shares in SWCs, which represent [70-80]¹⁹⁹ of the relevant market in Portugal, namely Pool Technologie ([10-20]%), Hayward ([5-10]%) and BSV ([5-10]%).

5.2.5.9.5. Italy

- (241) In Italy the Parties' combined market share amounts to [30-40]% (Zodiac [10-20]% + Fluidra [10-20]%) in the relevant market for sanitising and dosing equipment. The merged entity will continue to face competition from other players with non-negligible market shares, namely Pool Technologie, whose market share ([10-20]%) exceeds the increment brought by Zodiac, Pentair ([5-10]%), Autochlor ([5-10]%) and Hayward ([5-10]%).

5.2.5.9.6. Austria

- (242) As regards Sweden, the Parties' combined market share comes to [40-50]% (Zodiac [10-20]% + Fluidra [30-40]%) in the relevant market for sanitising and dosing equipment. According to the Commission's market reconstruction, the merged entity will continue to face competition from other players with non-

¹⁹⁸ Parties' estimates supplied in reply to Q14 of RFI19; Form CO p. 111 and 112.

¹⁹⁹ Parties' estimates supplied in reply to Q14 of RFI19; Form CO p. 111 and 112.

negligible market shares in SWCs, which represent [60-70]%²⁰⁰ of the relevant market in Austria, namely Hayward ([5-10]%) and Bayrol ([5-10]%).

5.2.5.9.7. Other affected markets

- (243) In addition, the Transaction gives rise to five affected markets where the Parties have minimal overlaps and/or minimal presence, namely Croatia, Cyprus, Hungary, Poland and the UK. The Parties' combined market share does not exceed 40% in any of those markets and the Commission's investigation was able to confirm the presence of major water treatment specialists in each of them.²⁰¹
- (244) In Croatia the combined market share comes to [30-40]%, but Fluidra's sales are just EUR [...] and its increment only [0-5]%. Alternative competitors supplying sanitising and dosing equipment in Croatia include Avady, CCEI and SEKO.
- (245) In Cyprus the Parties have a combined share of [40-50]% but Zodiac has limited sales of EUR [...]. The Parties will continue to face competition from suppliers of sanitising and dosing equipment such as SEKO.
- (246) As regards Hungary, the Parties' combined share is [30-40]%, but combined sales are limited, namely EUR [...], and Fluidra has sales of only EUR [...]. Other competitors supplying sanitising and dosing equipment in Hungary include CCEI and SEKO.
- (247) As for Poland the Parties' combined share comes to [30-40]%; however, the Parties have low combined sales of EUR [...] and Zodiac's sales are very limited, namely EUR [...]. The Parties will continue to face competition from suppliers of sanitising and dosing equipment such as CCEI, SEKO and Bayrol.
- (248) With regard to the UK, the Parties have a combined market share of [20-30]%, but Fluidra has negligible sales of EUR [...]. Alternative competitors supplying sanitising and dosing equipment in the UK include Bayrol and SEKO.

5.2.5.10. Conclusion

- (249) For the reasons set out above, the Transaction does not raise serious doubts as regards its compatibility with internal market with respect to sanitising and dosing equipment irrespective of whether the Transaction is assessed at national or EEA level.

5.2.6. Heating equipment

5.2.6.1. Introduction

- (250) Regarding heat pumps for pools, the Transaction does not result in an affected EEA market.

²⁰⁰ Parties' estimates supplied in reply to Q14 of RFI19; Form CO p. 111 and 112.

²⁰¹ Responses to Q2 of Competitors questionnaire.

- (251) At national level, the Transaction gives rise to horizontally affected markets in 7 EEA countries: Spain (combined [50-60]%; Zodiac [20-30]%; Fluidra [30-40]%), Italy (combined [20-30]%; Zodiac [10-20]%; Fluidra [5-10]%), France (combined [20-30]%; Zodiac [10-20]%; Fluidra [5-10]%), Austria (combined [40-50]%; Zodiac [10-20]%; Fluidra [20-30]%), Belgium (combined [50-60]%; Zodiac [30-40]%; Fluidra [10-20]%), Greece (combined [30-40]%; Zodiac [10-20]%; Fluidra [20-30]%) and Portugal (combined [20-30]%; Zodiac [20-30]%; Fluidra [5-10]%).
- (252) In addition, the Transaction gives rise to four affected markets where the Parties have minimal overlaps and/or minimal presence, namely Sweden, Estonia, Ireland and Cyprus. The Parties' combined market share does not exceed 40% in any of those markets (with the exception of Estonia) and the Commission's investigation was able to confirm the presence of other significant players in each of them.²⁰²

5.2.6.2. The Parties' views

- (253) According to the Parties, post-Transaction the Parties will continue to face intense competition from a large number of players, especially Asia based manufacturers, which sell under their own brand or manufacture heat pumps for other suppliers. The Parties further argue that, due to their presence in the wider refrigeration sector, Asia based manufacturers of heat pumps are at the technology edge for these products.

5.2.6.3. The Commission's assessment

- (254) The market investigation confirmed to a large extent the Parties' arguments.
- (255) First, competition from a number of alternative suppliers is confirmed by internal documents. The following slide, taken from Zodiac's internal documents, provides evidence of this in relation to the French market for heat pumps, which accounts for more than 50% of the European market for heat pumps. The slide shows that there are a number of competitors already at manufacturer level with significant shares of supply including: Zodiac, Fairland, Zealux, Axen, Phnix and others. Fluidra does not even appear among the manufacturers of heat pumps as Fluidra sources them from [supplier] (as it is the case for [supplier]) and resell them under its proprietary brands.

Figure 7: manufacturer shares analysis for heat pumps

[Internal Zodiac estimates]

Source: Zodiac's internal document "[...]" of January 20th 2017.

- (256) Second, the importance of other sources of competition, and particularly Asia-based suppliers in the markets for heat pumps was also confirmed by the market investigation. When asked if Asian heat pump suppliers were able to constrain

²⁰² Responses to Q2 of the Competitors questionnaire.

the pricing of heat pumps in the EEA, a large majority of respondents to the market investigation confirmed that this was indeed the case.²⁰³

- (257) In narrative responses, for instance, one competitor noted “*because they have very competitive prices*”, while another stated “*FAIRLAND Y OTROS FABRICANTES ESTAN ENTRANDO EN EL MERCADO POR PRECIO MAS BAJO*” or “*Lower prices proposed to distribution due to massification*”.²⁰⁴ Also to this point, one general customer noted “*COPIAN MUY BIEN Y SUS COSTES DE PRODUCCION SON MUY BAJOS*”.²⁰⁵
- (258) Third, the market investigation also revealed that, at present, it is not difficult for Asia-based manufacturers to compete in Europe. This is for several reasons. In the first place, given that Asia-based players are generally very competitive, it is not difficult for them to have access to or enter in partnership with large distributors of heating equipment. In the second place, distributors are said to be able to also provide the after-sale services such as technical assistance and/or spare parts for the heat pump equipment they distribute. In the third place, most of these manufacturers, like Fairland for example, have their own post-sales services of maintenance and spare parts and this service it is offered to all distributors. In the fourth place, in many EEA countries there are third-party networks of technicians that can be relied on for post sales assistance of heat pumps.²⁰⁶
- (259) The Transaction is therefore not likely to raise any serious doubts even in relation to the narrowest plausible market for heat pumps.
- (260) Regarding the residual heating equipment for pools, the Transaction does not result in an affected EEA market.
- (261) The Transaction would result in horizontally affected markets in three EEA countries: Spain, Germany and France. However, in these countries, the merged entity will continue to face competition from other players with non-negligible market shares, including Intex, Poolcorp, Poolex, Vulcan (Electro), Behncke, CCEI, Max Dapra, Aqualux, Pahlen, Alfa Laval, Gimleo, Thermalec, Procopi (Climexel), Productos SP and Piscimar-Behq.²⁰⁷
- (262) In addition, the market for other heating equipment for pools is experiencing rapid and significant disruption through the development and proliferation of highly efficient heat pumps technology as it is shown by the current trends in the

²⁰³ Responses to Q81 of Q1b Distributor questionnaire, Q88 of Q1a Customers questionnaire, and Q79 of Q2 Competitors questionnaire.

²⁰⁴ Responses to Q79 of Q2 Competitors questionnaire.

²⁰⁵ Responses to Q88 of Q1a Customers questionnaire.

²⁰⁶ See the responses to the market reconstruction questionnaire sent to the top 5 distributors for heat pumps in each of the following countries: Spain, France, Italy, Germany, Belgium and the UK.

²⁰⁷ In addition, the Transaction gives rise to two affected markets where the Parties have minimal overlaps and/or minimal presence, namely Greece and Portugal. The Parties' combined market share does not exceed 40% in any of those markets and the Commission's investigation was able to confirm the presence of other significant players in each of them.

sales for heating equipment for pools (i.e. significant sales growth of for heating pumps compared to stagnant sales for other heating equipment).²⁰⁸

5.2.6.4. Conclusion

- (263) On the basis of the above, the Commission concludes that the Transaction does not raise serious doubts as regards its impact on the market for heat pumps and the markets for other pool heating equipment irrespective of whether the Transaction is assessed at national or EEA level.

5.2.7. *Dehumidifiers*

- (264) The Transaction results in an affected EEA market in relation to residential pool dehumidifiers (combined market shares would be [20-30]%). At national level, the Transaction gives rise to horizontally affected markets in France and Spain, where the Parties' respective combined market share would be [20-30]% (Zodiac [20-30]%; Fluidra [0-5]%) and [20-30]% (Zodiac [10-20]%; Fluidra [5-10]%). In 2016, Fluidra only sold [...] residential pool dehumidifiers in France and [...] in Spain.

- (265) If the market were broadened to include also commercial pool dehumidifiers, the Transaction would result in horizontally affected markets only in France, where the Parties' market shares would be [20-30]% (Zodiac [20-30]%; Fluidra <1%).

- (266) The above levels of the combined market shares imply that there is a wide range of other competitors, which would be able to constrain the behaviour of the merging Parties. These include players such as Menerga, Dantherm, Calorex, Microwell, Airmotion, Herget, Ciat, Polytropic, Borealis and Airlan.

- (267) On the basis of the above, the Commission concludes that the Transaction does not raise serious doubts as regards its impact on the markets for pool dehumidifiers in France and Spain.

5.2.8. *Swimming pool pumps and filters*

5.2.8.1. Introduction

- (268) Zodiac's internal documents submitted in the course of this investigation indicated that, even if Zodiac has a negligible presence on markets for pumps and filters, these are the result of a recent entry and expansion strategy.²⁰⁹ In particular, Zodiac has recently introduced a number of pumps (6 models) and filters (2 models) in the EU. The same internal documents indicate that Zodiac aims to capture around [10-20]% market share by 2020 in "equipment market" (comprising of pumps and filters) in France.

²⁰⁸ See the Parties' responses to RFI 19.

²⁰⁹ For example, see p. 256 of Annex 7 to the Form CO.

5.2.8.2. The Parties' views

(269) The Parties claim that Zodiac is not a significant player on the overall market of (i) pumps or (ii) filters (or any potential sub-segmentation within those two product markets) and that there are a large number of competitors active within the markets of pumps and filters.

5.2.8.3. The Commission's assessment

(270) While the investigation provided some indications that Zodiac has clearly focused its efforts in entering pumps and filters markets, the results of the strategy have not matched the optimistic plans laid out in internal documents, and according to which Zodiac could have gained a larger share than it actually did.

(271) The fact that Zodiac has recently entered and expanded its pump and filter offering in the EEA is supported by various internal documents provided to the Commission in the course of this investigation.²¹⁰ Zodiac has procured an *ad hoc* study from [...] to evaluate the business case of such an entry.²¹¹

(272) Zodiac's internal documents indicate that it had ambitious plans to capture [10-20]% of "equipment market" which comprises of pumps and filters in France which is the largest European market for those products.²¹² Its entry plans into Spain and Germany were more modest with the view to capture around [5-10]% market share. Similarly, Zodiac's intention was to capture around [5-10]% in remaining Member States (so-called "export markets" where Zodiac sells its pool equipment through third party distribution).²¹³ The Commission was also able to establish that Zodiac's entry in pumps and filters markets has been noticed by other major market participants.²¹⁴

Swimming pool pumps

(273) For the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to swimming pool pumps.

(274) First, the actual market shares and future market share projections do not suggest that Zodiac is a major player exerting a significant constraint on the market of pumps or any segmentation therein.

(275) On the basis of 2017 turnover figures, the Transaction resulted in four affected markets by value: Greece (combined share of [40-50]% with an increment of [0-5]% brought by Zodiac), Cyprus (combined share of [40-50]% with *de*

²¹⁰ Annex 7 of the Form CO, various internal documents provided in response to Q6 RFI#4 (Zodiac [...] management plan, pt.2, p. 21), Q10 RFI#4 ([Zodiac's internal document], p. 10) and others.

²¹¹ [Zodiac's internal document] (provided in response to Q12 RFI#7).

²¹² P. 2 of Zodiac's internal document "[Zodiac's internal document]", 28 January 2016 (response to Q15 RFI#7).

²¹³ P. 2-3 [Zodiac's internal document].

²¹⁴ Non-confidential minutes of a phone interview with a competitor (18 May 2018) and non-confidential minutes of a phone interview with a competitor (25 May 2018).

minimis increment brought by Zodiac), the UK (combined share of [30-40]% with an increment of [0-5]% brought by Zodiac), Spain (combined share of [20-30]% with an increment of [0-5]% brought by Zodiac).

- (276) The Parties' competitive position is largely similar if only single speed pumps are taken into account, namely: Greece (combined share of [40-50]% with an increment of [0-5]% brought by Zodiac), Cyprus (combined share of [30-40]% with *de minimis* increment brought by Zodiac), the UK (combined share of [30-40]% with an increment of [0-5]% brought by Zodiac), Spain (combined share of [20-30]% with an increment of [0-5]% brought by Zodiac), and Italy, the only additional affected market (combined share of [20-30]% with an increment of [0-5]% brought by Zodiac).
- (277) With respect to variable speed pumps, the Transaction resulted in two affected markets in 2017 by value: Belgium (combined share of [30-40]% with an increment of [0-5]% brought by Fluidra) and Greece (combined share of [20-30]% with an increment of [5-10]% brought by Fluidra).
- (278) Second, recent data provided by the Parties on their most recent sales do not affect these trends.
- (279) Third, even under the most optimistic plans detailed by Zodiac in its internal documents, the combined entity would continue to face competition from a number of players.
- (280) Zodiac's business plan provided to the Commission²¹⁵ indicates a more optimistic growth for 2017 and 2018 than the actual sales data submitted to the Commission in the course of this investigation. In particular, in 2017 Zodiac's actual pump turnover was EUR [...] in France, while business plan indicated a target of EUR [...]. Similarly, the most up-to-date parties' estimates provided indicate the target for 2018 at around EUR [...] if compared to EUR [...] in the business plan. Therefore, Zodiac appears to have overestimated its future market share with respect to pump market in France.
- (281) Even if the most conservative scenario was taken into account and the initial business plan of achieving EUR [...] in France by 2020 was to be considered, Zodiac's share will still be around [10-20]%. In such a case the Parties combined market share would be around [30-40]%.²¹⁶ However, a sufficient number of competitors exist to constrain the parties post-merger.
- (282) Fourth, the market investigation provided no indications that Zodiac's technology would be disruptive or would provide a competitive edge against Fluidra or any other market participant.²¹⁷

²¹⁵ Response to Q14 RFI#7.

²¹⁶ In line with Zodiac's internal documents, the Commission took [5-10]% annual growth rate of the total market size to calculate the projected market shares in 2020.

²¹⁷ Non-confidential minutes of a phone interview with a competitor (18 May 2018) and non-confidential minutes of a phone interview with a competitor (25 May 2018).

Swimming pool filters

- (283) For the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to swimming pool filters.
- (284) First, Zodiac does not manufacture its own filters but rather markets third party products under its own brands. In particular, its Boreal filter (the only sand media filter it offers in the EEA) is manufactured by [...].²¹⁸ The market investigation indicated that third party manufacturing is a typical way to enter the filter market, since only few companies, such as Hayward or Pentair, are engaged in manufacturing of those products.²¹⁹
- (285) Second, the actual market shares and future market share projections do not suggest that Zodiac is a major player exerting a significant constraint on the market of filters or any segmentation therein.
- (286) On the basis of 2017 turnover figures, the Transaction results in six affected markets for polyester laminated filters by value: Portugal (combined share of [50-60]% with an increment of [5-10]% brought by Zodiac which represents around EUR [...]), Spain (combined share of [40-50]% with an increment of [0-5]% brought by Zodiac), Austria (combined share of [30-40]% with *de minimis* increment brought by Zodiac), France (combined share of [20-30]% with *de minimis* increment brought by Zodiac), Italy (combined share of [20-30]% with an increment of [0-5]% brought by Zodiac), and the UK (combined share of [20-30]% with *de minimis* increment brought by Zodiac).
- (287) Third, recent data provided by the Parties on their most recent sales do not affect these trends.
- (288) Fourth, even under the most optimistic plans detailed by Zodiac in its internal documents, the combined entity would continue to face competition from a number of players.
- (289) With respect to Portugal, Zodiac market share is equal or below its main competitors, namely – Hayward ([20-30]%) and Pentair ([5-10]%). There are also other players such as Ecompositos ([0-5]%) and some others that will remain on the market. Therefore, a sufficient number of players will still exist to constrain the parties post-merger.
- (290) Fifth, the market investigation has indicated that Zodiac's filter is not based on any disruptive technology and, in fact, depends on third party manufacturing. This is also supported by Zodiac's internal documents, since it views itself as one of the many other competitors.²²⁰
- (291) Sixth, Zodiac appears to be falling behind its initial plan to capture [10-20]% of the market share in France. Zodiac's business plan provided to the

²¹⁸ Response to Q14 RFI#14.

²¹⁹ Non-confidential minutes of a phone interview with a competitor (25 May 2018).

²²⁰ P. 39 of [Zodiac's internal document].

Commission²²¹ indicates a more optimistic growth for 2017 and 2018 than the actual sales data submitted to the Commission in the course of this investigation. In particular, in 2017 Zodiac's actual pump turnover was EUR [...] in France, while business plan indicated EUR [...]. Similarly, the most up-to-date parties' estimates provided indicate the target for 2018 at around EUR [...] if compared to EUR [...] in the business plan. Therefore, Zodiac appears to have overestimated its future market share with respect to filter market in France.

(292) However, even if the most conservative scenario was taken into account and the initial business plan of achieving EUR [...] in France by 2020 was to be considered, Zodiac's share will still be around [5-10]%. In such a case the Parties combined market share would be around [30-40]%. However, at least Hayward ([20-30]%) and Pentair ([20-30]%), and possibly more players, will remain to constrain the parties post-merger.

5.2.8.4. A sufficient number of other competitors will remain to constrain the parties

(293) The market investigation and Zodiac's internal documents indicate that Zodiac's pumps and filters are largely comparable with those of other players.²²² Next to well established players (Hayward and Pentair) there are other niche OEM manufacturers such as Speck, Saci Pumps, ESPA that will continue exerting competitive pressure on the parties post-merger.

5.2.8.5. Conclusion

(294) In the light of the above, the Transaction does not raise serious doubts as regards its compatibility with internal market with respect to markets for pumps and filters and any possible segmentation therein irrespective of whether the Transaction is assessed at national or EEA level.

5.3. Vertically affected markets

(295) The Transaction gives rise to vertically affected markets in relation to the Parties' presence in the upstream markets for pool equipment products and Fluidra's activities in wholesale distribution of pool equipment products.

(296) A number of vertical concerns were expressed by distributors during the market investigation. In particular, a Greek distributor stated that he "*fears in particular that Fluidra may use the merger to shut out its distribution competitors from access to Zodiac products or worsen commercial conditions*".²²³

5.3.1. The legal framework

(297) Foreclosure concerns a situation where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of a merger and those

²²¹ Response to Q14 RFI#7.

²²² Non-confidential minutes of a phone interview with a competitor (18 May 2018) and non-confidential minutes of a phone interview with a competitor (25 May 2018). Also, [Zodiac's internal document].

²²³ Non-confidential minutes of a phone interview with a distributor (14 March 2018).

companies' ability and/or incentive to compete is reduced. Such foreclosure can take two forms: input and customer foreclosure.²²⁴

- (298) Input foreclosure is a situation where, post-merger, the new entity would be likely to restrict access to products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar process and conditions as absent the merger.²²⁵
- (299) Customer foreclosure is a situation where the merged entity may foreclose access to sufficient customer base to its actual or potential rivals in the upstream market and reduce their ability or incentive to compete. In turn, that may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.²²⁶
- (300) For an input or customer foreclosure scenario to raise competition issues, three factors need to be taken into account: 1) the ability of the merged entity to engage in foreclosure, 2) the incentives of the merged entity to do so and 3) whether a foreclosure strategy would have a significant detrimental effect on competition on the downstream market.²²⁷

5.3.2. *The Commission's assessment*

- (301) For the reasons set out below, the Commission has come to the conclusion that the Transaction would not significantly impede effective competition due to vertical non-coordinated effects.

5.3.2.1. No input foreclosure effects

- (302) The merged entity's market shares will remain not particularly significant for all pool equipment products with the notable exception of automatic pool cleaners (robotic cleaners and automatic suction cleaners) in several EEA countries.
- (303) Nonetheless, even if the merged entity had the ability to engage into input foreclosure, it would likely not have a significant incentive to do so. In particular, the Parties' market shares downstream would remain small after the Transaction, which may limit the merged entity's ability to achieve significantly increased profits downstream if input foreclosure was attempted.
- (304) Moreover, should the combined entity attempt to foreclose its downstream rivals, it would suffer upstream losses which are not likely to be counterbalanced by higher downstream profits. Currently, the margin earned by manufacturing companies is the region of [40-50]%, while the margins earned at distribution level is in the region of [30-40]%. Therefore, if the combined entity

²²⁴ See, for instance, Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 7. ('Non-Horizontal Guidelines'), paragraphs 29 and 30.

²²⁵ See, for instance, Non-Horizontal Guidelines, paragraph 31.

²²⁶ See, for instance, Non-Horizontal Guidelines, paragraph 58.

²²⁷ See, for instance, Non-Horizontal Guidelines, paragraphs 32 and 59.

were to restrict the supply of pool equipment to its downstream competitors, it would risk losing more profitable sales than those that would possibly gain at downstream level.²²⁸ This would be the case even in the most optimistic, but unlikely, scenario that all the sales lost at manufacturing upstream would be recouped by higher downstream sales.

- (305) One competitor referred to in paragraph (296) indicated that it would be possible to change their main supplier if he faced restrictive behaviour from the merged entity: "*[Distributor] does not think that Zodiac has any products that are indispensable and believes it could survive without Zodiac as a supplier*".²²⁹
- (306) In light of the above and the evidence available to the Commission and in view of the outcome of the market investigation, it appears unlikely that the Parties would have the ability to engage into input foreclosure strategy after the Transaction.

5.3.2.2. No customer foreclosure effects

- (307) Given Fluidra's limited position on the downstream market for wholesale distribution of pool equipment products, it is unlikely that the merged entity will have the ability or the incentive to foreclose access to a significant customer base.
- (308) Even if Fluidra were to source all of its requirements from its upstream operations or from Zodiac's going forward, its upstream competitors would still have a wide array of choices to go to market with their products, including third party distributors, pool equipment retailers, internet retailers, direct sales to pool builders/installers and mass market outlets.
- (309) In light of the above and the evidence available to the Commission and in view of the outcome of the market investigation, it appears unlikely that the Parties would have the ability to engage into customer foreclosure strategy after the Transaction.

5.4. Conglomerate effects

- (310) In the course of its investigation, few market participants expressed concerns about the Transaction's alleged conglomerate non-coordinated effects. Some competitors raised concerns about potential foreclosure through the leveraging of the Parties' combined product portfolios. In particular, a competitor active in the market for pool cleaners argued that the Parties "*will have the widest range of pool equipment products and they will be able to put pressure and create risks for all the other manufacturers*".²³⁰

²²⁸ See reply to Q39 of RFI 6.

²²⁹ Non-confidential minutes of a phone interview with a distributor (14 March 2018).

²³⁰ Non-confidential minutes of a phone interview with a competitor.

5.4.1. *The legal framework*

- (311) In most cases conglomerate mergers do not give rise to competition problems. Only in cases where the merged entity enjoys strong market power in one of the markets concerned, a conglomerate merger may create possibilities for exclusionary bundling or tying practices that could foreclose competitors and ultimately lead to them exiting the market, or otherwise significantly impede competition in the markets concerned.²³¹ As noted in paragraph 104 of the Non-Horizontal Guidelines, "*The fact that the merged entity will have a broad range or portfolio of products does not, as such, raise competition concerns*".
- (312) In accordance with the Non-horizontal Merger Guidelines, the assessment of conglomerate effects requires an analysis of (a) the ability to foreclose, (b) the incentives to foreclose, and (c) the overall likely impact on competition and consumers.²³²

5.4.2. *The view of the Parties*

- (313) The Parties argue that the features of the pool equipment market in the EEA are incompatible with any theory of harm based on a conglomerate theory of harm and that the Transaction will not create any risk for conglomerate effects for the following reasons.
- (314) First, they emphasize that different suppliers are able to offer a wide range of pool equipment, either by directly offering their own products (e.g. Pentair, Hayward) or by reselling third-party equipment (e.g. Speck). Moreover, the Parties explain that offering a broad range of products is not necessary for a manufacturer to be a credible competitor.²³³
- (315) Second, the Parties claim that none of their pool equipment items can be considered as a "must-stock" product and that, as a result of the Transaction, their product portfolio in the EEA will almost completely coincide with Fluidra's current portfolio.

5.4.3. *The Commission's assessment*

- (316) For the reasons set out below, the Commission concludes that the Transaction would not significantly impede effective competition due to conglomerate non-coordinated effects.

5.4.3.1. No ability to foreclose

- (317) The ability to foreclose is mainly assessed on the basis of the merged entity's capacity to exploit its market power by linking products pertaining to separate markets, which is done either by tying or bundling practices.²³⁴

²³¹ See Commission's Guidelines on the assessment of non-horizontal mergers, paragraph 93.

²³² See Commission's Guidelines on the assessment of non-horizontal mergers, paragraph 94.

²³³ In their view, for instance, Pentair's limited product offering has not prevented it from exerting a significant competitive constraint on other suppliers with a much broader product range.

²³⁴ See Commission's Guidelines on the assessment of non-horizontal mergers, paragraph 95.

- (318) As for the overlapping product markets, the competitive assessment set out in Section 5 shows that the Parties would enjoy relatively strong market power only with regard to robotic cleaners. However, as explained in Section 6, the remedies proposed by the Parties – consisting in the divestiture of Fluidra's subsidiary Aquatron Robotic Technology Ltd. representing about [90-100]% of Fluidra's sales of robotic cleaners in the EEA – would eliminate any market power concern. Indeed, the merged entity will be able to manufacture and sell only Zodiac's robotic cleaners, representing [20-30]% of the market in the EEA.
- (319) The lack of market power to engage in foreclosing strategies post-transaction would be confirmed also when taking into account non-overlapping products.
- (320) Apart from the aforementioned lack of sufficient market power in any market segment, the Commission considers that the merged entity will not have the ability to foreclose its competitors for the following reasons.
- (321) First, the merged entity will not have a materially broader range of products than Fluidra already has in the EEA. Fluidra is already a full-line player and the addition of Zodiac's products does not widen the combined portfolio in terms of both scope and price positioning of the products. Furthermore, it must be noted that there are other suppliers that manufacture and market the entire range of swimming pool equipment (i.e. Pentair and Hayward).
- (322) Second, the market investigation and the internal documents confirmed that the Parties do not have any must-have brands. Zodiac's brands, such as Polaris and Zodiac itself, are generally perceived to be strong brands in automatic cleaners, but not to the extent they can be considered as must-have brands²³⁵. Moreover, the technical features and the specific application of electric cleaners do not appear to make them a suitable product for tying or bundling.

5.4.3.2. No incentive to foreclose

- (323) The Commission considers that the merged entity would not have incentives to engage in any anticompetitive tying or bundling practice enabling it to foreclose other competitors.
- (324) First, the Commission's investigation and documents provided by the Parties have shown that tying, pure bundling and mixed bundling represent a widespread commercial practice in the market for pool equipment. In the majority of cases, basic bundles seem to consist of two components, mainly filters and pumps, to which other products may be optionally added in order to benefit from further discounts, such as water treatment systems, heat pumps or electric cleaners²³⁶. Moreover, the market investigation²³⁷ also indicates that retroactive rebates for purchasing a wide range of products are quite common in the industry.

²³⁵ Responses to Q29 of Q1b Distributors questionnaire; responses to Q30 of Q1a Customers questionnaire.

²³⁶ Response to Q6 of RFI#10 and Q17 of RFI#7.

²³⁷ Reply to Q 83 of Q2 Competitors questionnaire.

- (325) Second, the Commission found no conclusive evidence of anticompetitive tying or bundling practices which the Parties may have engaged in in the past. The Commission received one document from a competitor reporting an instance of highly discounted bundled offers made by Zodiac. However, the Commission considers that this merely indicates a commercial strategy deployed with a view to establishing a presence in new product markets for Zodiac.
- (326) Third, the Commission's investigation has not revealed any evidence of post-Transaction foreclosure strategies being planned by the Parties.

5.4.3.3. The overall impact on competition and consumers

- (327) The Commission found no conclusive evidence of past competitive harm caused by the Parties through leveraging strategies or indications that such strategies could lead to competitive harm in the future. On the basis of its investigation, the Commission considers that any mixed bundling or tying strategy concerning the Parties' products would be unlikely to lead to foreclosure of competitors to the requisite standard of the Non-Horizontal Merger Guidelines.

5.4.3.4. Conclusion

- (328) In the light of the above, it appears unlikely that post-Transaction the merged entity would be able or would be incentivised to engage into leveraging strategies to an extent that would cause foreclosure of competing suppliers of swimming pool equipment.

6. MODIFICATIONS OF THE TRANSACTION

6.1. Framework for the assessment of the commitments

- (329) The Commission recalls that the following principles, as referred to in the Commission Regulation (EC) No 802/2004 and in the Commission Notice on remedies acceptable under the Merger Regulation (the "Remedies Notice") apply where parties to a merger choose to offer commitments in order to restore effective competition following serious doubts identified by the Commission with a view to having the transaction approved in phase 1.
- (330) In Phase I, commitments offered by the parties can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation. Where the assessment confirms that the proposed commitments remove the grounds for serious doubts on this basis, the Commission clears the merger in Phase I.
- (331) In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission considers all relevant factors including *inter alia* the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market. As set out in the Remedies Notice, the

commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view. The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market in that they will prevent the significant impediment to effective competition in all relevant markets where competition concerns were identified.

- (332) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. The Commission must determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market.
- (333) As concerns the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard.
- (334) Divestiture commitments are often the most effective way to eliminate competition concerns resulting from horizontal overlaps. The intended effects of a divestiture will only be achieved if and once the business to divest is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market.
- (335) In order to ensure that the business is divested to a suitable purchaser, the commitments have to include criteria to define its suitability which will allow the Commission to conclude that the divestiture of the business to such a purchaser will likely remove the competition concerns identified.

6.2. Commitments submitted by the Parties

- (336) In order to remove the serious doubts arising from the Transaction described in Section 5.2.4 in relation to the robotic cleaners in the EEA and at national level, on 6 June 2018 the Notifying Parties submitted commitments pursuant to Article 6(2) of the Merger Regulation (the "Initial Commitments").
- (337) The Commission launched a market test of the Initial Commitments on 8 June 2018, seeking responses from competitors, distributors and customers. The Commission informed the Notifying Party of the results of the market test on 15 June 2018. Following the Commission's feedback on the market test and the assessment of the Initial Commitments, the Parties submitted a revised set of commitments on 19 June 2018 (the "Final Commitments").
- (338) The Final Commitments are annexed to this decision and form an integral part thereof.

6.3. Initial Commitments

6.3.1. Description of the Initial Commitments

- (339) The Initial Commitments consist of the divestment of a current Fluidra subsidiary, namely – Aquatron Robotic Technology Ltd (the "Divestment Business"). This is a company based in Israel which manufactures the vast

majority of robotic cleaners sold by Fluidra in the EEA. The company also sells part of its output in other third countries.

- (340) The Divestment Business comprises all assets and staff which contribute to the operations of Aquatron, including:
- (a) all tangible and intangible assets, including intellectual property rights, R&D, pipeline projects, and the Aquatron product portfolio as well as the product names under which these products are marketed and any IP-rights relating to these product names;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business;
 - (d) the Personnel; and
 - (e) any subsidiary of Aquatron.
- (341) At present, the Divestment Business largely sells its products through Fluidra's group organization under Fluidra's proprietary brands. In order not to disrupt the Divestment Business's sales, Fluidra commits, at the option of the purchaser, to purchase electric pool cleaners from the Divestment Business [...] for a period of [...], on condition of [...]. Alternatively, a phase-out period of [...] is set whereby the purchaser may market the electric pool cleaners produced by the Divestment business under its own brand(s) and gradually decrease its reliance on Fluidra's distribution network. In particular, an "[...]" formula is foreseen under which [...]. If the purchaser will elect not to rely on Fluidra's distribution network during or at the end of the [information on the "black-out" period] period, a [...].
- (342) The Initial Commitments also foresee a non-compete clause for a period of [...], according to which the Notifying Parties commit not to sell robotic cleaners other than those produced by the Divestment Business under their proprietary brands in the EEA. The non-compete clause does not apply to robotic cleaners [details of the non-compete obligation] which constitute a minor proportion of robotic cleaners sold in the EEA by Fluidra, as well as electric pool cleaners sold under a Zodiac proprietary trademarks or under development by Zodiac.
- (343) The Initial Commitments propose to assign the "Aquabot" trademark to Aquatron, subject to a [...] licence to Fluidra to use this trademark to sell its products [...]. Product names will also be assigned to Aquatron. The divestment also includes transfer of IP rights, in particular, the assignment to Aquatron of Fluidra's patents subject to [...] licence for [Fluidra subsidiary] to manufacture robotic cleaners [...]. Furthermore, Fluidra undertakes to transfer all IP, know-how and technical documentation relating to [Fluidra subsidiary] pipeline [project].
- (344) The Initial Commitments also envisaged transitional arrangements with respect to certain services, including after sales services.

(345) Finally, according to the Initial Commitments, in addition to the standard purchaser criteria, the purchaser [...].

6.3.2. *Results of the market test*

(346) The Commission launched a market test of the Initial Commitments on 8 June 2018, which was addressed to competitors, distributors and customers. The results of the market test were generally positive and several players expressed interest in acquiring the Divestment Business.

(347) A large majority of competitors, distributors and customers found that the Divestment Business includes all necessary tangible and intangible assets for a purchaser to operate and effectively compete with the merged entity, and is sufficient to remove the competition concerns raised in the market for robotic cleaners in the EEA.²³⁸

(348) With regard to additional sales and account management staff currently employed at group level in the EEA, a large majority of competitors, distributors and customers stated that those employees should be included with the Divestment Business to enable the Purchaser to compete effectively in the market for robotic cleaners in the EEA.²³⁹

(349) As regards the transfer of brands and IP, a large majority of competitors, distributors and customers agreed that the brands, trademarks, IP rights and knowhow transferred are sufficient for the purchaser to compete with the merged entity in the market for robotic cleaners in the EEA. One customer and several distributors commented that the license-back of IP of brands should be [details of license-back agreement].²⁴⁰

(350) As for the transitional agreements for the supply of products and services, and aftersales services, currently provided to the Divestment business, a large majority of competitors, distributors and customers agreed that [...] is a sufficient period of time as regards products and services, and [...] as regards aftersales services.²⁴¹

(351) In relation to Fluidra's undertaking to continue to purchase robotic cleaners from Aquatron, a majority of competitors, distributors and customers stated that the mechanism provided for would enable and incentivise the Purchaser to establish itself as an independent competitor within [...]. However, several competitors and customers were critical of the immediate reduction in the volume commitment if the Purchaser starts selling the products under a different brand through other distribution channels. A competitor commented that in order to

²³⁸ Responses to Questions 17 and 18 of the Competitors, Distributors and Customers remedy questionnaires

²³⁹ Responses to Question 14 of the Competitors, Distributors and Customers remedy questionnaires.

²⁴⁰ Responses to Questions 12 and 13 of the Competitors, Distributors and Customers remedy questionnaires.

²⁴¹ Responses to Questions 15 and 16 of the Competitors, Distributors and Customers remedy questionnaires.

become independent, a supplier needs to own the brands under which its products are sold.²⁴²

- (352) With regard to the [information on the "black-out" period], a majority of competitors and distributors agreed that this is important for the purchaser to establish itself as an independent competitor. A majority of distributors and several competitors indicated that this period should be longer [...]. Views from customers were more mixed in this regard.²⁴³
- (353) As regards the [information on the "black-out" period], a majority of competitors, distributors and customers considered this to be generally sufficient but various comments from all categories of respondents clearly indicated that a longer period would be preferable to give the market enough time to adapt to the Purchaser's brand.²⁴⁴
- (354) A clear majority of competitors and customers consider that the Purchaser needs [...].²⁴⁵
- (355) A large majority of competitors and customers, and a half of distributors stated that the purchaser should [...].²⁴⁶
- (356) Finally, [...] respondents indicated their interest in acquiring the Divestment Business, including [...] swimming pool equipment suppliers, and [...] swimming pool equipment distributors.²⁴⁷
- (357) The Initial Commitments were consequently improved by the Final Commitments submitted on 19 June 2018 in order to remedy the serious doubts identified by the Commission as to the compatibility of the Transaction with the internal market.

6.3.3. *The Commission's assessment of the Initial Commitments*

6.3.3.1. Scope of the Divestment Business

- (358) The Commission takes note that the Divestment Business covers products which account for approximately [90-100]% of Fluidra's sales of robotic cleaners in the EEA. The proposal is therefore clear-cut in that it eliminates almost the entire overlap created by the Transaction.
- (359) The Divestment Business includes all assets and personnel which contribute to its current operations as a manufacturing business and are necessary to generally

²⁴² Responses to Questions 5 and 6 of the Competitors, Distributors and Customers remedy questionnaires.

²⁴³ Responses to Questions 15 and 16 of the Competitors, Distributors and Customers remedy questionnaires.

²⁴⁴ Responses to Question 9 of the Competitors, Distributors and Customers remedy questionnaires.

²⁴⁵ Responses to Question 21 of the Competitors, Distributors and Customers remedy questionnaires.

²⁴⁶ Responses to Question 22 of the Competitors, Distributors and Customers remedy questionnaires.

²⁴⁷ Responses to Question 4 of the Competitors, Distributors and Customers remedy questionnaires.

ensure its viability and competitiveness on a lasting basis. In particular, all the necessary tangible and intangible assets, distribution arrangements (to the extent that those are formalised and subject to third party consent where applicable) and supply contracts with third-party suppliers and subcontractors have been included in the remedy package. Moreover, on the basis of the financial information submitted by the parties, there do not appear to be any significant concerns regarding its profitability. In this respect, the Commission notes that the Divestment Business has assets totalling about EUR [...] million, EEA sales of EUR [...] million in the EEA and total sales of EUR [...] worldwide (EUR [...] EBITDA in 2016).

- (360) The Divestment Business also includes its own R&D activities and pipeline projects. It must be noted that the Divestment Business is a pre-existing stand-alone business that was acquired by Fluidra in 2011 and, until that date, operated as an independent company. It has always manufactured and developed electric pool cleaners independently through its own product development and R&D resources. In addition, the production plant of the divested business has a capacity that represents more than half of the overall EEA production capacity for robotic pool cleaners. In fact, the Divestment Business would become the EEA's third largest supplier of robotic cleaners.
- (361) Therefore, the Commission considers that the scope of the Divestment Business is sufficient to address the identified competition concerns.

6.3.3.2. Viability and competitiveness of the Divestment Business

- (362) Despite the broad perimeter of the remedy, its legal structure as a stand-alone manufacturing business, and its profitability as apparent from its financial information, the market investigation and the Commission's own assessment identified certain risks affecting the viability and competitiveness of the Divestment Business.
- (363) First, the Divestment Business has limited independent access to market. Currently, the Divestment Business is vertically integrated and relies on Fluidra's distribution organisation in the EEA. Under the Initial Commitments, there is a risk that the Divestment Business would remain an OEM supplier of Fluidra and would not seek to establish itself as an independent player in the market for robotic cleaners.
- (364) More specifically, the Initial Commitments provide the Divestment Business with the possibility to rely on Fluidra's distribution network under different options. Under the first option, a potential purchaser could continue selling all of its robotic cleaner volume exclusively under Fluidra's brands through Fluidra's distribution network for a period of [...], which could be extended by mutual agreement. By its very nature, such an arrangement would amount to a private label manufacturing for Fluidra and the Divestment Business would remain dependent on Fluidra's distribution network. Under the second option, a potential purchaser can chose to use its own brand(s) for sales outside the Fluidra distribution network, with the consequence that the volumes sold through Fluidra's distribution network would be gradually reduced each following year following the [...] formula, as described above. The Commission considers that providing the purchaser of the Divestment Business with the first option to entirely rely on Fluidra's distribution network for a period of [...] with

the possibility of mutual extension creates a substantial risk that at the end of the initial [...] period it would be entirely dependent of Fluidra for its commercial strategy in the EEA.

- (365) Moreover, in light of the feedback of the market test, the Commission considers that the [...] transitional period may be insufficiently long in order for a new independent player to emerge.
- (366) The Initial Commitments also did not foresee any transitional mechanism with respect to the distribution of robotic cleaners outside the EEA. Such an arrangement is critical for the viability of the Divestment Business, since the turnover outside of the EEA represents around [...] % of the overall Divestment Business turnover.
- (367) Second, the Initial Commitments did not foresee any co-branding arrangement (in particular as regards sales of the Divestment Business's products through the Fluidra distribution network). Moreover, the Commission notes that the Aquabot brand, that is included in the Divestment Business, is used to a significant extent in the EEA. Therefore, a co-branding arrangement would be crucial to establish the presence of the potential purchaser and its brand(s) in the EEA for robotic cleaners. Further, the Commission noted a certain misalignment between the envisaged black-out period and the non-compete obligation, which would have allowed the merged entity in certain constellations to sell third-party manufactured robotic cleaners under the Fluidra brand, while distributing robotic cleaners manufactured by the Divestment Business under the same brands. Further, in light of the feedback of the market test, the Commission considers the [information on a "black-out" period] as insufficiently long in aiding a potential purchaser to establish itself as an independent player in the EEA.
- (368) Third, the Initial Commitments relied on certain central functions performed by Fluidra at the group level. In particular, the Divestment Business did not include any sales personnel that were considered key in the success of selling robotic cleaners in the EEA.

6.3.3.3. Potential Purchasers

- (369) The requirements for the purchaser of the Divestment Business set out in the Initial Commitments correspond to the standard requirements contained in the model text for divestiture commitments of the Commission.²⁴⁸ They require, in particular, that (i) the purchaser must be independent of and unconnected to the Parties, (ii) the purchaser must have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and competitive force, and (iii) the acquisition by the purchaser must not be likely to create prima facie competition concerns nor give rise to a risk that the implementation of the commitments will be delayed. Moreover, the Initial Commitments foresee that [...].

²⁴⁸ Paragraph 17 of the model text, available at http://ec.europa.eu/competition/mergers/legislation/template_commitments_en.pdf.

- (370) As mentioned above, respondents to the market test consider that the purchaser should [...]. Moreover, respondents to the market test stated that [...].
- (371) As indicated above, a number of industry players expressed their interest in purchasing the Divestment Business.
- (372) In light of the above, the Commission therefore finds that, while the interest expressed by certain market participants in the Divestment Business reduces risks on the implementation of the divestiture, the purchaser criteria are not adequate, as [...].

6.3.3.4. Conclusion on the Initial Commitments

- (373) In light of the market test results and its assessment, the Commission considers that the Initial Commitments are in principle capable of removing the identified serious doubts, subject to resolving the shortcomings discussed above.

6.4. Final Commitments

6.4.1. Description of the Final Commitments

- (374) The Parties submitted the Final Commitments on 19 June 2018. The full text of the Final Commitments is attached as an Annex to this Decision. The Final Commitments address the shortcomings identified above.
- (375) The Final Commitments have been modified *vis-à-vis* the Initial Commitments as described in Section 6,3,1 mainly as follows:
- (a) The Purchaser no longer has the option to continue selling all of its robotic cleaner volume under Fluidra's brands within Fluidra's distribution network. Instead, a phase-out period will start immediately, during which the Purchaser will use its own brand and gradually decrease its reliance on Fluidra's distribution network.
 - (b) The initial [...] phase-out period under an [...] formula is extended to [...] under a [...] % formula for products to be sold in the EEA. A separate provision is made for products to be sold outside the EEA, [...].
 - (c) The Purchaser has now been offered the possibility of co-branding: during [...] the Purchaser is now free to sell the entire volume purchased for the EEA under the volume commitment on a co-branding basis. During [...], the entire volume under the volume commitment will be supplied under Aquatron's own brands.
 - (d) As regards the [information on a "black-out" period], the commitments now provide that [...], and for a period covering the next [...] European Pool Seasons, defined as the period from 1 March to 31 August inclusive each year, the Notifying Parties commit to [...].
 - (e) With regard to additional personnel employed centrally, the Commitments now provide that the Purchaser has the right to offer employment in Aquatron to [...] Spain-based sales/aftersales staff currently employed by Fluidra Affiliated Undertakings who, on the Effective Date, dedicate more

than 50 % of their time on a full-time equivalent basis to the sale of Aquatron products.

- (f) As regards the identity of the purchaser, [...].
- (g) In addition, there have been certain technical improvements, such as the clarification of the timeframe when IP rights relating to [pipeline project] will be transferred and the clarification that the license-back to Aquaproducts shall not allow Aquaproducts to sublicense the respective IP rights.

6.4.2. *Assessment of the Final Commitments*

- (376) The Commission notes that the Final Commitments correspond in large part to the Initial Commitments, with the modifications described in Section 6.3.1 which constitute improvements aiming at addressing the issues as regards the viability and competitiveness of the Divestment Business under the Initial Commitments.
- (377) The Commission considers that the Final Commitments remove risks affecting the viability and competitiveness of the Divestment Business under the Initial Commitments for the following reasons:
 - (h) The Final Commitments eliminated the possibility of the Divestment Business to rely on Fluidra's distribution network for its entire robotic cleaner volume within the transitional period. The Commission considers that this limitation will incentivize the Divestment Business to become a truly independent player on the market at the end the transitional period instead of relying entirely on third-party manufacturing for Fluidra. The mechanism, incentivizing the Divestment Business to establish its independent distribution network, is further supported [...].
 - (i) The Final Commitments also extended the transitional period from [...] and included a less steep volume slope for robotic cleaners to be sold in the EEA ([...]). That will allow more time for the Divestment Business to prepare for the transition from relying on Fluidra's distribution to own distribution channels. The Divestment Business will continue manufacturing for Fluidra within the [...] post-closing. Such an arrangement will ensure that it has more time to prepare its independent commercial strategy, including securing of (additional) third party distributors for its robotic cleaners if necessary. The [...] formula is optional depending on specific situation of the purchaser. The purchaser of the Divestment Business will also be able to terminate the supply relationship with Fluidra earlier by serving a notice. That should enable the Divestment Business to convert all robotic cleaning volume to own distribution earlier than the foreseen [...], if desired.
 - (j) Moreover, the Final Commitments also included provisions addressing the distribution of robotic cleaners produced by the Divestment Business outside of the EEA. That will ensure the viability of the Divestment Business, since a significant proportion of its sales are realized outside of the EEA.

- (k) The Final Commitments also foresee the possibility of co-branding for [...] of the transitional period. The Commission considers that this will be sufficient for the customers to start associating the Divestment Business with the purchaser's own brands. For the remaining [...] of the transitional period, the Divestment will be selling robotic cleaners under its own brand within Fluidra's distribution network. That will further strengthen the brand awareness and image of the Divestment Business as an independent player on the market.
- (l) The market investigation also demonstrated that a longer [...] is preferable in this case. The Final Commitments envisage that the [...] will be applicable throughout the entire transitional period and beyond, since the last [...] relate to European pool seasons, ending on 31 August. This will enable to preserve the viability of the Divestment Business, [...].
- (m) Under the Final Commitments the Divestment Business will also benefit from additional sales/after-sales personnel local in Spain. The Commission considers that this will further enable the Divestment Business to establish itself as an independent player.
- (n) Finally, the Commission has received enough indications that there are a number of interested potential purchasers to have comfort that the Divestment Business will be sold to a suitable purchaser.

6.4.3. *Conclusion of the Final Commitments*

- (378) In light of the considerations in this Section and taking the results of the market test and other information available to it, the Commission considers that the Final Commitments are sufficient and appropriate to remove the serious doubts raised by the Transaction with respect to robotic cleaners in the EEA.

7. CONDITIONS AND OBLIGATIONS

- (379) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- (380) The fulfilment of the measures that give rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligation on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (381) In accordance with the distinction between conditions and obligations described in the preceding recital, this Decision should be made conditional on full compliance with the requirements set out in Section B of the Final Commitments (including the Schedules), which should constitute conditions.

The remaining requirements set out in other Sections of the Final Commitments should constitute obligations imposed on the Parties.

8. CONCLUSION

- (382) For the above reasons, the European Commission has decided not to oppose the notified concentration and to declare it compatible with the internal market and the Agreement on the European Economic Area, subject to full compliance with the conditions in Section B and in the Schedule of the Final Commitments annexed to this Decision and with the obligations contained in the remaining sections of the Final Commitments This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the Agreement on the European Economic Area.

For the Commission

(Signed)
Phil HOGAN
Member of the Commission

Dated 19 June 2018

CASE M.8738 – RHÔNE / ZODIAC / FLUIDRA

Commitments to the European Commission

CASE NO. M.8738 – RHÔNE / ZODIAC / FLUIDRA

Commitments to the European Commission

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “**Merger Regulation**”),¹ (the “**Notifying Parties**”) hereby enter into the following Commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering acquisition of joint control by RHONE and the FLUIDRA Founding Families over FLUIDRA, S.A. (“**FLUIDRA**”) as the entity resulting from the merger of PISCINE LUXEMBOURG HOLDING 2 S.À R.L. (“**PISCINE**”) and FLUIDRA (the “**Concentration**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in the light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), in the general framework of European Union law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under the Commission Regulation (EC) No 802/2004 (the “**Remedies Notice**”).

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “**Consolidated Jurisdictional Notice**”).

AQUAPRODUCTS Patents: all patents owned by AQUAPRODUCTS, on the Effective Date, and that used to manufacture the AQUATRON Product Portfolio.

AQUAPRODUCTS PRODUCT Portfolio: all products manufactured by AQUAPRODUCTS on the Effective Date, which, for the avoidance of doubt, does not include any product in the AQUATRON Product Portfolio.

AQUATRON: AQUATRON ROBOTIC TECHNOLOGY LTD, incorporated under the laws of Israel, with its registered office at Alon Tavor Industrial Zone, P.O.B 1088, Afula Elite 18110, Israel and registered in Israel under no. 513942912.

AQUATRON Product Portfolio: all products manufactured by AQUATRON on the Effective Date including AQUATRON pipeline products.

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraphs 5 and 6 and described more in detail in the Schedule.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

¹ See Section 2.1.1, paragraph 19, of the Form CO.

Closing Period: the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Notifying Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Parties and who has/have received from the Notifying Parties the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

European Pool Season: the period between 1 March to 31 August inclusive each year.

FLUIDRA Proprietary Brands: "Astralpool", "Gre" and "CTX".

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by the Notifying Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s), who is/are approved by the Commission and appointed by the Notifying Parties, and who has/have the duty to monitor the Notifying Parties' compliance with the conditions and obligations attached to the Decision.

[...]: [...].

Non-Compete Obligation: as this term is defined in Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

Notifying Parties: RHONE and the FLUIDRA Founding Families.

Parties: the Notifying Parties and their Affiliated Undertakings.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 19 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

ZODIAC: PISCINE and its subsidiaries on the Effective Date.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, the Notifying Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 20 of these Commitments. To carry out the divestiture, the Notifying Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If FLUIDRA has not entered into such an agreement at the end of the First Divestiture Period, FLUIDRA shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 32 and 33 in the Trustee Divestiture Period.
3. The Notifying Parties shall be deemed to have complied with this commitment if:
 - (a) by the end of the Trustee Divestiture Period, FLUIDRA or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 20; and
 - (b) if the Closing of the sale of the Divestiture Business to the Purchaser takes place within the Closing Period.
4. In order to maintain the structural effect of the Commitments, the Notifying Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 45 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of AQUATRON, a wholly-owned subsidiary of FLUIDRA active in the development, manufacturing, and sale of electric pool cleaners. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
- (a) all tangible and intangible assets (including intellectual property rights, R&D, pipeline projects, and the AQUATRON Product Portfolio as well as the product names under which these products are marketed and any IP-rights relating to these product names, but not, for the avoidance of doubt, the FLUIDRA Proprietary Brands);
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business;
 - (d) the Personnel; and
 - (e) any subsidiary of AQUATRON.
6. In addition, the Divestment Business includes:
- (a) Assignment to AQUATRON of the AQUAPRODUCTS Patents, subject to a world-wide, royalty-free non-exclusive perpetual license for AQUAPRODUCTS to use these patents to manufacture the AQUAPRODUCTS Product Portfolio ([...]).
 - (b) [...].
 - (c) In addition, should AQUATRON be interested in a license to other patents held by AQUAPRODUCTS on Closing, the Notifying Parties commit to procure that AQUAPRODUCTS offers AQUATRON a [...] license to said patents on [...], provided that AQUATRON makes its interest in a specific patent known to AQUAPRODUCTS in writing within [...] after Closing.
 - (d) The assignment to AQUATRON of any patent licensing agreement [...] that are used to manufacture the AQUATRON Product Portfolio on the Effective Date.
 - (e) The Notifying Parties [...] to assign to AQUATRON any private label supply arrangement, on Closing, entered into by FLUIDRA with third-party customers for products manufactured at the AQUATRON plant. [...].
 - (f) The Notifying Parties [...] to avoid the termination of any customer contract entered into by AQUATRON as a result of a change of control clause that is triggered by Closing. If despite [...], the contract is nevertheless terminated for this reason, [...].
 - (g) Assignment to AQUATRON of the “Aquabot” trademark, subject to a [...] license for [...] to use this trademark to sell the AQUAPRODUCTS Product Portfolio [...].
 - (h) An undertaking by FLUIDRA, if requested by the Purchaser, to continue to purchase, during a period of at least [...] after Closing, certain volumes of electric pool cleaners from AQUATRON on substantially the same terms and conditions, including price, quality and delivery standards, as those in force on the Effective Date between AQUATRON and its purchaser in the FLUIDRA group. This volume commitment will

follow a downwards sloping scale for each year (i.e. twelve-month period) following Closing that will vary depending on whether the products are acquired for the EEA market or for a non-EEA market, as described in the table below. The reference volumes to which the percentages in this table shall apply are [...] (the "Original Volumes").

[...]

The Purchaser may, at any time, put an end to the volume commitment by giving written notice to FLUIDRA.

During [...], the Purchaser shall be free to sell the entire volume purchased, for the EEA, under the volume commitment on a [...]s in accordance with the following formula: [...]. During the [...] year, the entire volume under the volume commitment shall be supplied under [...].

Moreover, following the [...], and for a period covering the next [...] European Pool Seasons, the Notifying Parties commit to [...] (the "[...]").

If the Purchaser puts an end to the volume commitment before the end of the [...], the [...] shall apply for a period covering the next [...] European Pool [...] will start. Therefore, and in order for FLUIDRA to be able to plan its purchases from AQUATRON on a rational basis, the written notice as per above shall be given at least [...] before the next European Pool Season during which the [...] will apply.

- (i) The Notifying Parties' commitment to refrain from, from the Effective Date and for a period of [...] from Closing, entering into any agreement with a purchaser in the EEA that imposes a Non-Compete Obligation with respect to electric pool cleaners. The Notifying Parties shall also, as from the Effective Date, [...], to put an end to any existing Non-Compete Obligation of this type prior to Closing or as soon as possible thereafter.
- (j) The Purchaser shall also have the right to offer employment in AQUATRON, upon Closing, to [...] staff currently employed by FLUIDRA or its Affiliated Undertakings which, on the Effective Date, [...]. The Notifying Parties shall co-operate with the Purchaser in good faith to make this possible (subject to employment laws and other applicable legislation). The non-solicitation clause in paragraph 15 will apply, mutatis mutandis, to these persons. If these persons do not accept the Purchaser's offer, or if an offer is not made, [...].

Moreover, these persons shall report to the Hold-Separate Manager between the Effective Date and Closing, and exclusively work for and in the best interest of AQUATRON during this period and in full compliance with the provisions of these commitments. Their remuneration during the period [...].

The Notifying Parties shall procure that the persons in question sign personal non-disclosure agreements, which shall mirror the obligations in these commitments, in particular as regards ring-fencing of the Divestment Business, and compel them to maintain any Confidential Information relating to the Divestment Business confidential to the Parties. During a period of [...] from the date when they cease working for the benefit of AQUATRON, these persons must not be involved in the Parties' electric pool cleaner businesses.

- (k) The benefit, if requested by the purchaser, for a transitional period of up to [...] after Closing and on terms and conditions equivalent to those at present afforded to the

Divestment Business, of all current arrangements under which FLUIDRA or its Affiliated Undertakings supply products or services to the Divestment Business, other than those mentioned above, and as detailed in the Schedule, unless otherwise agreed with the Purchaser. An extended period of [...] shall apply to aftersales services relating to countries in which FLUIDRA and/or its Affiliated Undertakings, on Closing Date, provides such services in relation to the AQUATRON Product Portfolio.

Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant FLUIDRA business units involved in providing such services.

7. If there is any asset or personnel which is not covered by the above, but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Section C. Related Commitments

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Notifying Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Notifying Parties undertakes:
 - (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Notifying Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Notifying Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

9. The Notifying Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the business(es) it is retaining and to ensure that unless explicitly permitted under these Commitments:
 - (a) management and staff of the business(es) retained by the Parties have no involvement in the Divestment Business;
 - (b) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.
10. Until Closing, the Notifying Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which the Parties are retaining. Immediately after the adoption of the Decision, the Notifying Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard the Notifying Parties, require them to replace the Hold Separate Manager.
11. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise FLUIDRA's rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Notifying Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of FLUIDRA. Upon request of the Monitoring Trustee, the Notifying Parties' shall cause such members of the boards to resign.

Ring-fencing

12. The Notifying Parties shall implement, or procure to implement, all necessary measures to ensure that the Parties do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by them. This includes measures vis-à-vis FLUIDRA's appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. FLUIDRA may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to FLUIDRA is required by law.

Non-competition clause

13. The Notifying Parties undertake for a period of [...] after Closing not to sell, and procure that the Parties do not sell, in the EEA, any electric pool cleaner unless manufactured by AQUATRON.
14. The undertaking in paragraph 13 above shall however not prevent the Parties from selling such products in the EEA manufactured by someone else than AQUATRON in the following circumstances:
 - (a) the products were either (i) sold under a ZODIAC proprietary trademarks on or before the Effective Date or (ii) under development by ZODIAC on the Effective Date;
 - (b) jet-driven electric pool cleaners manufactured by AQUAPRODUCTS; and
 - (c) resell, as part of their wholesale distribution business, third-party brands.

Non-solicitation clause

15. The Notifying Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

Due diligence

16. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Notifying Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide potential purchasers with sufficient information as regards the Divestment Business;
 - (a) provide potential purchasers with sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

17. The Notifying Parties shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Notifying Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
18. The Notifying Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

19. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
- (a) The Purchaser shall be independent of and unconnected to the Notifying Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
 - (b) The Purchaser shall [...] have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
20. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When FLUIDRA has reached an agreement with a purchaser, the Notifying Parties shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Notifying Parties must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

21. The Notifying Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.
22. If the Notifying Parties have not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by The Notifying Parties at that time or thereafter, The Notifying Parties shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

23. The Trustee shall:
- (a) at the time of appointment, be independent of the Notifying Parties and their Affiliated Undertakings;
 - (b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (c) neither have nor become exposed to a Conflict of Interest.
24. The Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Notifying Parties

25. No later than two weeks after the Effective Date, the Notifying Parties shall submit the name or names of one or more natural or legal persons whom the Notifying Parties proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Notifying Parties shall submit a list of one or more persons whom the Notifying Parties proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 23 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

26. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Notifying Parties

27. If all the proposed Trustees are rejected, the Notifying Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 21 and 26 of these Commitments.

Trustee Nominated by the Commission

28. If further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

29. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

30. The monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 8 and 9 of these Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of these Commitments;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,

- make sure that any Confidential Information relating to the Divestment Business obtained by the Notifying Parties before the Effective Date is eliminated and will not be used by them and
 - decide whether such information may be disclosed to or kept by Parties as the disclosure is reasonably necessary to allow them to carry out the divestiture or as the disclosure is required by law;
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties;
- (iii) propose to the Notifying Parties such measures as the Monitoring Trustee considers necessary to ensure the Notifying Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
 - (a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (b) potential purchasers are granted reasonable access to the Personnel;
- (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (vi) provide to the Commission, sending the Notifying Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;
- (vii) promptly report in writing to the Commission, sending the Notifying Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Parties are failing to comply with these Commitments;
- (viii) within one week after receipt of the documented proposal referred to in paragraph 20 of these Commitments, submit to the Commission, sending the Notifying Parties a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

31. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 19 and 20 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Parties, subject to the Notifying Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
33. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. Duties and obligations of the Parties

34. The Notifying Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Notifying Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Notifying Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Notifying Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
35. The Notifying Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Notifying Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Notifying Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

36. The Notifying Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Notifying Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.
37. the Notifying Parties shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Parties for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
38. At the expense of the Notifying Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Parties' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Parties refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 of these Commitments shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Parties during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
39. The Notifying Parties agree that the Commission may share Confidential Information proprietary to the Notifying Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.
40. The Notifying Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
41. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

42. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
 - (a) the Commission may, after hearing the Trustee and the Notifying Parties, require the Notifying Parties to replace the Trustee; or
 - (b) the Notifying Parties may, with the prior approval of the Commission, replace the Trustee.

43. If the Trustee is removed according to paragraph 39 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 21 to 28 of these Commitments.
44. Unless removed according to paragraph 42 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F The review clause

45. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Parties or, in appropriate cases, on its own initiative. Where the Notifying Parties request an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. Only in exceptional circumstances shall the Notifying Parties be entitled to request an extension within the last month of any period.
46. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Fast-track dispute resolution mechanism

47. In the event that any of the Purchaser makes a claim against the Notifying Parties or any of its Affiliated Undertakings in relation to agreements in relation to the execution of these Commitments (a "**Relevant Agreement**"), that Purchaser may invoke the dispute settlement procedure described in this Section.
48. The Purchaser shall notify Fluidra and the Monitoring Trustee of its request in writing and specify the reasons why it believes that the Notifying Parties are failing to comply with the Relevant Agreement. The Notifying Parties shall use their best efforts to resolve all differences of opinion and to settle all disputes of which it has been notified through co-operation and consultation within a reasonable period of time, not to exceed fifteen (15) working days after receipt of the request.
49. The Monitoring Trustee shall present its own proposal for resolving the dispute within eight (8) working days, specifying in writing the action, if any, to be taken by the Notifying Parties to ensure compliance with the Relevant Agreement, and be prepared, if requested, to facilitate the settlement of the dispute.

50. Should the Notifying Parties and the Purchaser fail to resolve their differences of opinion through cooperation and consultation, the Purchaser may initiate the arbitration process described below. The arbitration process shall be used only to resolve disputes regarding compliance with the Relevant Agreements.
51. To initiate the arbitration process, the Purchaser shall give written notice to FLUIDRA nominating an arbitrator and stating the specific nature of the claim, the factual basis of its position and the relief requested. FLUIDRA shall appoint another arbitrator within 14 calendar days after receipt of the written notice. The arbitrators so appointed shall appoint a third arbitrator to be president of the arbitral tribunal within seven calendar days after both arbitrators have been nominated. Should FLUIDRA fail to nominate an arbitrator, or if the two arbitrators fail to agree on the president, the default appointment(s) shall be made by the International Chamber of Commerce (“ICC”). The three-person arbitral tribunal shall herein be referred to as the “Arbitral Tribunal.”
52. The dispute shall be finally resolved by arbitration under the ICC Rules of Arbitration, with such modifications or adaptations as foreseen herein (the “Rules”). The arbitration shall be conducted in Paris, in the English language.
53. The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as appropriate in the circumstances.
54. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the parties to the arbitration. Terms of reference shall be drawn up and signed by the parties to the arbitration and the Arbitral Tribunal at the organisational meeting or thereafter and a procedural timetable shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.
55. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Notifying Parties and/or their Affiliated Undertakings or the Purchaser, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the parties to the arbitration agree.
56. The arbitrators shall agree in writing to keep any confidential information and business secrets disclosed to them in confidence. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Monitoring Trustee and outside counsel and experts of the opposing party.
57. The burden of proof in any dispute governed under the Rules shall be as follows:
 - (a) the Purchaser must produce evidence of a prima facie case;
 - (b) if the Purchaser does so, the Arbitral Tribunal must find in favour of the Purchaser unless the Notifying Parties can produce evidence to the contrary.
58. The Commission shall be allowed and enabled to participate in all stages of the procedure by:
 - (a) receiving all written submissions (including documents and reports, etc.) made by the parties to the arbitration;

- (b) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the parties to the arbitration (including terms of reference and procedural time-table);
 - (c) filing any Commission amicus curiae briefs; and
 - (d) (being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.
- 59.** The Arbitral Tribunal shall forward, or shall order the parties to the arbitration to forward, the documents mentioned to the Commission without delay.
- 60.** In the event of disagreement between the parties to the arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal shall inform the Commission, and may seek the Commission's interpretation of the Commitments before finding in favour of any party to the arbitration and shall be bound by the Commission's interpretation.
- 61.** The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. The Commitments shall be construed in accordance with the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.
- 62.** Upon request of the Purchaser, the Arbitral Tribunal may make a preliminary ruling on the dispute. The preliminary ruling shall be rendered within one month after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.
- 63.** The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by the Notifying Parties and/or their Affiliated Undertakings to comply with the Relevant Agreements vis-à-vis the Purchaser. The final award shall be final and binding on the parties to the arbitration and shall resolve the dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.
- 64.** The final award shall, as a rule, be rendered within three (3) months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitments if asked by the Arbitral Tribunal.
- 65.** The parties to the arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award.
- 66.** Nothing in the above-described arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation and the Treaty on the Functioning of the European Union.

Section F. Entry into force

67. The Commitments shall take effect upon the date of adoption of the Decision.

duly authorised for and on behalf of RHÔNE CAPITAL L.L.C.

duly authorised for and on behalf of the FLUIDRA Founding Families

Schedule

1. The Divestment Business as operated to date has the following legal and functional structure

it is currently set up as a wholly-owned subsidiary of FLUIDRA, registered under the laws of Israel. It has [...] employees and [...] staff workers from temporary agencies, functionally organised into nine departments, all of them dependent on the General Manager: (i) IT; (ii) Human Resources; (iii) Purchasing; (iv) Quality assurance; (v) Finance; (vi) CDR (Sales and aftersales); (vii) Operations; (viii) Engineering; and (ix) R&D.

2. In accordance with paragraphs 5 and 6 of these Commitments, the Divestment Business includes, but is not limited to:

- (a) all tangible and intangible assets (including intellectual property rights, R&D, pipeline projects, and the AQUATRON Product Portfolio as well as the product names under which these products are marketed and any IP-rights relating to these product names, but not, for the avoidance of doubt, the FLUIDRA Proprietary Brands);
- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
- (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business;
- (d) the Personnel;
- (e) any subsidiary of AQUATRON;
- (f) all supply, customer and other agreements entered into by AQUATRON;
- (g) the Intellectual Property Rights used in conducting the Divestment Business;
- (h) all customer, credit and other records relating to the AQUATRON business;
- (i) FLUIDRA and/or its Affiliated Undertakings to offer customary transitional services during a transitional period of up to [...] after Closing and [...] for aftersales services.

3. If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.
