

***Case No IV/M.1603 -  
GENERAL MOTORS  
ACCEPTANCE  
CORPORATION / AAS***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 22/07/1999

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22/07/1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

**Subject: Case No IV/M.1603 – General Motors Acceptance Corporation/AAS**

Notification of 18.6.1999 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 18.6.1999, the Commission received the notification of a proposed operation by which General Motors Acceptance Corporation (“GMAC”) will acquire sole control over ARRIVA Automotive Solutions Limited (“AAS”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

### **I. The parties and the operation**

3. GMAC, a wholly-owned subsidiary of General Motors Corporation (“GM”), is active in offering a wide variety of automotive financial services throughout the world.
4. AAS, the target company, is active in contract vehicle leasing and fleet management in the U.K. It is a subsidiary of ARRIVA, plc (“ARRIVA”), which has a range of activities in the transportation sector, mainly in the United Kingdom, but also in Holland and Denmark.
5. The proposed operation consists of the acquisition by GMAC of sole control over AAS, through the acquisition of the totality of the shareholdings in AAS from ARRIVA.

### **II. Concentration of a Community Dimension**

6. The operation constitutes a concentration within the meaning of Article 3.1.b. of the Merger Regulation.

7. GM and AAS have a combined aggregate worldwide turnover in excess of EUR<sup>1</sup>. 5,000 million (GM, EUR 143,891 million; AAS, EUR 463.8 million). Each of them has a Community-wide turnover in excess of EUR 250 million (GM, EUR 26,619 million; AAS, EUR 463.8 million). GM and AAS do not both achieve more than two-thirds of their respective aggregate Community-wide turnovers within one and the same Member State. The notified operation has, therefore, a Community dimension.

### **III. Assessment**

8. AAS operates in the area of contract vehicle hire and leasing and the related area of fleet management in the U.K. As neither GMAC itself, nor its parent company, GM, are active in either of these areas, the operation results in no horizontal overlap. Nor does the operation give rise to any vertically affected markets, or present any other competition concerns.
9. Hence, it is considered that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

### **IV. Ancillary Restraints**

10. Under clause 14.1.1 of the Share Sale Agreement, ARRIVA, the vendor, covenants with GMAC that neither it nor any other member of the ARRIVA Group shall, for a period of three years from completion be concerned in any business carrying on business in the U.K. which is competitive with any of the businesses carried out by AAS or its subsidiaries at completion. This non-compete obligation is intended to guarantee the acquirer the full value of the assets transferred, which in this particular operation include goodwill and know-how. As such, the Commission considers the clause directly related and necessary to the implementation of the concentration.
11. Under clauses 14.1.2, 14.1.3, and 14.1.4, ARRIVA further covenants that neither it nor any other member of the ARRIVA Group shall, for a period of three years from completion, a) canvass or solicit for (providing customers with) similar goods or services to those being provided by AAS or its subsidiaries at completion, except on behalf of AAS, b) induce or attempt to induce any supplier of AAS or its subsidiaries, other than a member of the ARRIVA Group to cease to supply, or to restrict or vary the terms of supply, to that company, c) induce or attempt to induce any director or employee of AAS, or any of its subsidiaries, to leave the employment of that company. The Commission considers that these clauses can also be considered directly related to and necessary to the implementation of the concentration, in the same context of the protection of the full value of the assets (including goodwill and know-how) transferred.

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<sup>1</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

12. Similarly, clause 14.5, in which ARRIVA further covenants with GMAC that it, the vendor, shall not trade under or by reference to any of the trade names currently or formerly used by AAS or its subsidiaries, is considered by the Commission necessary to protect the full-value of these trade-marks.
13. Under clause 1 of the Agreed Draft Supply Agreement, for a period of two years from the date of completion of the Share Sale Agreement, GMAC will procure that AAS will purchase [...] vehicles per year from ARRIVA Motor Retail, provided that GMAC remains in the contract hire business in the U.K. and ARRIVA Motor Retail remains a subsidiary of ARRIVA. Prices shall be agreed on an arm's length basis of willing buyer and willing seller, for similar volumes of cars to a fleet car buyer on similar standards of service. According to GMAC, the amount of vehicles concerned constitutes less than a third of the AAS' annual purchase and the purpose of the clause is to provide continuity of the supply of cars by an existing supplier to the business being transferred for a period of two years. In these circumstances, the Commission can consider the clause directly related and necessary to the implementation of the concentration.

## **V. CONCLUSION**

14. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,