

***Case No COMP/M.6436 -
VOLKSWAGEN
FINANCIAL SERVICES /
D'IETEREN /
VOLKSWAGEN
D'IETEREN FINANCE
JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 20/12/2011

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Brussels, 20.12.2011
C(2011) 9913

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6436 – VOLKSWAGEN FINANCIAL SERVICES / D'IETEREN / VOLKSWAGEN D'IETEREN FINANCE JV
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹**

1. On 16 November 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Volkswagen Financial Services AG ("VWFS", Germany) and s.a. D'Ieteren n.v. ("D'Ieteren", Belgium), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Volkswagen D'Ieteren Finance SA ("VDFin", Belgium) by way of purchase of shares in a newly created company constituting a joint venture. (VWFS and D'Ieteren are hereinafter referred to as the "notifying parties" or "parties to the proposed transaction").²

I. THE PARTIES

2. VWFS is a wholly-owned subsidiary of Volkswagen. Volkswagen is a publicly traded German company which is principally engaged in the development, manufacture, sale and distribution of motor vehicles (including spare parts and accessories). VWFS is responsible for coordinating the worldwide financial services activities of Volkswagen

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

² OJ C 344, 24.11.2011, p. 13.

and specialises in the provision of financial services mainly relating to the distribution and financing of motor vehicles of the Volkswagen group brands.

3. In Belgium, VWFS is active through the Belgium branch of Volkswagen Bank GmbH ("VWBB") a wholly owned subsidiary of VWFS. VWBB provides retail financing to consumers purchasing a vehicle of the Volkswagen group brand, credit protection insurance for these consumer credits, and corporate lending to car dealerships that carry the Volkswagen group brands. In addition, VWFS has an indirect interest in LeasePlan Belgium NV ("LeasePlan"), a wholly owned subsidiary of LeasePlan Corporation N.V., over which Volkswagen exercises joint control.³ LeasePlan mainly offers multi-brand full fleet leasing and management services in Belgium.
4. D'Ieteren distributes Volkswagen, Audi, Skoda, Seat, Porsche, Bentley, Lamborghini, Bugatti and Yamaha vehicles, spare parts and after-sales services for the same brands across Belgium.⁴ It is also active in Belgium in the sale of used vehicles to professional and individual customers⁵ and provides long-term car rental services (i.e. operating leasing services) through its subsidiary D'Ieteren Lease s.a. ("DIL"), and financial leasing services through its joint venture with ING Car Lease Belgium, D'Ieteren Vehicle Trading S.A. ("DVT").⁶

II. THE OPERATION

5. On 10 October 2011 D'Ieteren and VWFS announced that they had reached agreement to create a joint venture (VDFin) intended to provide a full range of financial services related to the sale of Volkswagen group vehicles to dealers belonging to the D'Ieteren Group as well to third party dealers which distribute vehicles imported by D'Ieteren on the Belgian market.
6. VWFS and D'Ieteren have already registered VDFin as a new Belgian private limited liability company in which they each hold a 50% shareholding.⁷ As part of the proposed transaction VWFS will first contribute [...] to VDFin. D'Ieteren will then contribute its 100% shareholding in DIL to VDFin in exchange of which it will receive additional shares in VDFin.⁸ In order to maintain the original shareholding distribution, D'Ieteren

³ In Case No COMP/M.5568 - *Volkswagen/Fleet Investments/LeasePlan Corporation JV*, the Commission found that LeasePlan Corporation is ultimately jointly controlled by VWAG and the Metzler group within the meaning of Article 3(1)b of Council Regulation (EC) 139/2004. Since LeasePlan Belgium is a wholly owned subsidiary of LeasePlan Corporation, it can be considered that VW holds an indirect interest in LeasePlan Belgium.

⁴ The Yamaha vehicles are also distributed in the Grand Duchy of Luxembourg and in the Netherlands.

⁵ Used vehicles are also sold to a limited extent outside Belgium.

⁶ In addition, D'Ieteren is active in vehicle glass repair and replacement through its 92.7% owned subsidiary Belron which operates under 15 different brands including Carglass, Autoglass and Safelite and serves customers in 33 countries.

⁷ VWFS will hold 50% plus one share and D'Ieteren will hold 50% minus one share in VDFin. Pursuant to German financial regulations, VWFS must hold the majority of the shares of a company in order to be able to grant it shareholder loans as a subsidiary.

⁸ DIL is currently being restructured so that it encompasses D'Ieteren's Belgian operating and financial leasing activities and wholesale and retail used cars distribution activities.

will then sell VWFS part of its VDFin shareholding for [...]. As a final step, Volkswagen Bank GmbH will then sell its Belgian retail and dealer finance activities to VDFin for [...].

III. CONCENTRATION

Joint control

7. According to VDFin's Articles of Association, VWFS and D'Ieteren will nominate an equal number of directors. Moreover, no resolution will be passed at the Board of Directors' meeting unless at least one director appointed by each shareholder is present or represented and all present or represented directors vote in favour of the resolution (unanimity principle). VDFin will therefore be jointly controlled by VWFS and D'Ieteren.

Full-functionality

8. VDFin will be geared to play an active role on the Belgian market. From an operational perspective, it will be economically autonomous from VWFS and D'Ieteren performing the functions normally carried out by undertakings offering financial services in the car industry.
9. VDFin will offer its services not only *via* D'Ieteren's dealers but also *via* independent dealers distributing cars imported by D'Ieteren in Belgium. According to the notifying parties these customers will primarily consist of: (i) private customers purchasing cars with financing contracts from D'Ieteren dealers or independent dealers distributing cars imported by D'Ieteren; (ii) professional customers wanting to lease cars under operational or financial leasing contracts and (iii) D'Ieteren's dealers and independent dealers distributing cars imported by D'Ieteren which require stock financing.
10. VDFin will independently decide about the products it offers, its prices and any other strategic issues. For this purpose, VDFin will have its own management and its budget will be determined by the Board of Directors. VDFin will have a management dedicated to its day-to-day business as well as its own personnel⁹ which will be involved *inter alia* in management, sales and marketing, customer service, credit management, risk management, controlling, treasury, accounting, IT and credit/collection. The joint venture will also have access to sufficient resources, including finance, staff and assets, in order to carry out its business activities. VDFin will be set up for an initial term of five years and will be automatically renewed for an additional term of five years, if not terminated by one of the parties to the proposed transaction.
11. As a result of the proposed transaction, VWFS and D'Ieteren will exercise joint control over VDFin which will perform on a lasting basis all the functions of an autonomous economic entity. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

⁹ The JV will employ around 160 employees.

IV. EU DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [Volkswagen: EUR 126 875 million; D'Ieteren: EUR 5 529 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [Volkswagen: [...]; D'Ieteren: [...]]¹⁰, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

13. VDFin will provide operating and financial leasing as well as retail and dealer finance activities in Belgium, including credit protection insurance, in favour of D'Ieteren's customers, D'Ieteren's dealerships and independent car dealerships which are not owned by D'Ieteren but which sell cars imported by D'Ieteren. VDFin will also be active in the wholesale and retail distribution of used cars (i.e. those which have reached the end of their leasing contract).
14. The principal areas of overlap between the parties' activities resulting from the proposed transaction are in the areas of operating and financial leasing.¹¹

Horizontal overlaps

1. Operating leasing

Relevant product and geographic market

15. Operating leasing and financial leasing can be distinguished on the basis of their respective business models and offerings to consumers, particularly in relation to the ownership status of the good and the risks associated with the leasing.
16. In an operating lease, the risks of ownership are retained by the lessor while the lease duration does not cover any major part of the asset's life. Moreover, ownership is not

¹⁰ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

¹¹ The proposed transaction does not give rise to any overlap in car purchase financing for individual consumers as D'Ieteren is not active in this market and VWFS will transfer its activities in Belgium to VDFin.

As far as stock financing for dealers is concerned, it is noted that D'Ieteren is not active and VWFS will transfer its activities to VDFin. Although LeasePlan, a joint venture between Volkswagen and Fleet Investments does not offer stock financing for dealers, Excelease NV, a joint venture between LeasePlan and Inchcape International Group B.V., is active on the market in Belgium. According to the notifying parties, Excelease only financed some [...] cars in 2010. As the proposed transaction does not entail any change to the structure of the market, however, competition concerns can be excluded and the market for stock financing for dealers is therefore not addressed further in this decision.

Likewise, the sale of used passenger cars and light commercial vehicles will not be addressed in detail as D'Ieteren will transfer this activity to VDFin and Volkswagen does not sell used cars in Belgium. Although LeasePlan does sell used passenger cars in Belgium, its market share is limited at less than 5% according to the notifying parties' estimates ([...] cars sold in 2010) meaning that the market would not be affected even if the LeasePlan's share were to be attributed in full to Volkswagen as D'Ieteren's market share in 2010 was also less than 5%.

transferred to the lessee at the end of the lease term and the lease contract does not contain a bargain purchase option. Similarly, the costs of other related services (such as maintenance and repair services) are included in the (monthly) lease payments.

17. In previous cases, the Commission has considered the geographic market as national in scope due to the differentiated consumer practices and national preferences concerning e.g. brands, existing language barriers and difficulties concerning cross-border transactions, although in the absence of competition concerns it has ultimately left the precise market definition open.¹²
18. For the purposes of this decision, the exact market definition can again be left open since the concentration does not raise competition concerns even on the basis of national markets.

Competitive assessment

19. D'Ieteren, through its subsidiary DIL which will be transferred to VDFin, is currently active in Belgium in the market for operating leasing activities. In 2010, DIL entered into [...] new operating lease contracts and had an estimated market share of [10-20%]. All of DIL's operating leasing activities will be transferred to VDFin. Following the proposed transaction, D'Ieteren will no longer be active in operating leasing other than through its participation in VDFin.
20. Although VWFS does not offer any operating leases in Belgium, Volkswagen has a 50% shareholding in LeasePlan Corporation ("LPC") which is mainly active in full fleet leasing and management services (and to a lesser extent operating and financial leasing).
21. The parties to the proposed transaction consider that LPC's market position should not be taken into account for the purposes of assessing the effect on competition of the notified operation as LPC is jointly controlled by Volkswagen and the Metzler group and as such Volkswagen is not able to influence LPC's commercial activities. However, even if the whole of LPC's activities were to be attributed to Volkswagen, the proposed transaction is not likely to raise any competition concerns for the reasons outlined below.
22. In 2010, LeasePlan Belgium ("LeasePlan") entered into [...] new operating lease contracts. According to the notifying parties, this would give LeasePlan a market share in Belgium of approximately [10-20%] in terms of new operating leases.¹³ Whilst the notifying parties acknowledge that LeasePlan is most likely the largest leasing company in Belgium by fleet size, they submit that the proposed transaction will not reduce competition since: (i) the parties would have a combined market share of approximately [20-30%] in 2010 in terms of *new* operating leases (and approximately [30-40%] if Excelease NV's sales are taken into account) and a market share of approximately [20-30%] in terms of *existing* operating leases ([20-30%] if Excelease NV's sales are taken

¹² See for example COMP/M.6333 – *BMW/ING Car Lease Case*, COMP/M.5568 – *Volkswagen/Fleet Investments/LeasePlan Corporation JV*; Case COMP/M.4199 – *De Lage Landen/Athlon*; Case COMP/M.3090 – *Volkswagen/Offset/Crescent/LeasePlan/JV*.

¹³ LPC is also active in operating leases in Belgium via a joint venture with Inchcape (Excelease N.V.). In 2010, Excelease entered into [...] new operating lease contracts in Belgium. If all Excelease sales were to be attributed to LPC, it would have a market share of approximately [10-20%] in terms of new operating leases.

into account); (ii) the market will continue to feature strong competitors, including KBC Autolease, ALD Automotive, ING Car Lease (now owned by BMW), Athlon Car Lease and Arval; and (iv) operating leases vary in length between three and four years and customers can easily multi-source or switch from one operational lease provider to another meaning that VDFin and LeasePlan would be unable to raise their prices following the proposed transaction without losing customers.

23. The proposed transaction would also not have a significant effect if the market were to be considered as being EEA-wide in scope as the joint venture will be active only in Belgium and the increment at an EEA-level according to the notifying parties would be less than 1%. In addition, the market investigation in the present case has indicated that neither customers nor competitors are concerned by the proposed transaction in relation to operating leasing.
24. It is therefore concluded that the proposed transaction does not raise serious doubts in relation to operating leasing.

2. Financial leasing

Relevant product and geographic market

25. Financial leases function as a loan by the lessor to enable the lessee to purchase a given asset, here a car. In contrast to operating leases, the risks associated with the investment are usually borne by the lessee and the legal as well as the commercial ownership is left with the financing lessor. At the end of the lease, the lessee usually has the option to acquire ownership of the asset for the consideration of the residual value.
26. In a previous case, the Commission distinguished finance leasing from other types of leasing on the grounds that the leasing agreements for financial leases are concluded with the main purpose of financing the vehicles.¹⁴
27. The Commission has previously considered the geographic market for financial leasing products to be national in scope although it has acknowledged that there is growing tendency on the part of larger companies to launch tenders for the provision of car leasing services across several member states.¹⁵ For the purposes of the present transaction, however, the exact market definitions can be left open since the concentration does not raise competition concerns even on the narrowest basis of national markets.

Competitive assessment

28. D'Ieteren is active on the market for financial leasing through its joint venture DVT with ING Car Lease. DVT offers financial leasing in Belgium as a separate service enabling customers to finance the lease of the vehicle. D'Ieteren intends to terminate its DVT joint venture and is currently negotiating with ING Lease to bring this about by May 2012 at

¹⁴ Case COMP/M.4199 - *De Lage Landen/Athlon*.

¹⁵ See for example COMP/M.4199 – *De Lage Landen/Athlon* and Case COMP/M.6333 – *BMW/ING Car Lease*.

the latest.¹⁶ As such after May 2012, D'Ieteren will no longer offer financial leasing through DVT and instead these products will be offered by VDFin.

29. According to the notifying parties, in 2010, DVT entered into [...] financial leasing contracts and had a market share of less than 5%. VWFS does not offer any financial leasing in Belgium but LeasePlan is present to a limited extent. In 2010, LeasePlan entered into [...] financial leasing contracts giving it a market share of less than 5%. This would also be the case if Excelease's sales were to be taken into account as it only entered into [...] such contracts in 2010. Thus, irrespective of whether LeasePlan's activities are attributed to Volkswagen, the proposed transaction would not give rise to an affected market in relation to financial leasing.
30. The proposed transaction would also not have a significant effect if the market were to be considered as being EEA-wide in scope as the joint venture will be active only in Belgium and the increment at an EEA-level according to the notifying parties would be less than 1%. In addition, the market investigation in the present case has indicated that neither customers nor competitors are unduly concerned by the proposed transaction.
31. It is therefore concluded that the proposed transaction does not raise serious doubts in relation to financial leasing

Vertical relationships

32. The activities contributed to VDFin could be considered as a downstream activity to the manufacturing and distribution of cars as they will mainly be offered to Volkswagen branded cars and thus as add-on services to supporting the distribution of the Volkswagen group cars.
- 1. Manufacture of cars and light commercial vehicles (upstream market) and distribution of cars and LCVs, spare parts and after-sale services (downstream market)**
33. In previous cases, the Commission has defined separate markets for the manufacture of new passenger cars and the manufacture of new light commercial vehicles ("LCVs").¹⁷ The Commission left open the question of whether the market for passenger cars and LCVs should be further sub-segmented into classes by size, vehicle type, price, etc.
 34. The notifying parties submit that the market for the manufacture of passenger cars and LCVs is at least EEA-wide. From the manufacturers' perspective, production of vehicles takes place on an international or even worldwide level.¹⁸ The competitive conditions are largely homogeneous throughout the EEA, all major producers of vehicles supply

¹⁶ There are [...] outstanding contracts in DVT's portfolio. The future status of these contracts is currently under discussion with ING Lease. [...]

¹⁷ See Case No COMP/M.5219 – VWAG / OFH / VWGI (25/09/2008), paragraphs 8 to 12, Case No COMP/M.3352 - Volkswagen/Hahn & Lang, and Case No COMP/M.2832 - General Motors/Daewoo Motors.

¹⁸ See for example Case No COMP/M.2832 – General Motors/DAEWOO Motors, paragraph 23.

their vehicles European-wide, there are no appreciable legal, economic or geographic market entry barriers, and transport costs play a minor role.

35. For the purposes of this decision, the exact market definitions can be left open since the proposed transaction will not give rise to concerns irrespective of the definition considered.
36. At EEA level, Volkswagen estimates its market share to be [20-30%] in passenger cars and [10-20%] in LCVs. In Belgium, the figures are [20-30%] and [5-10%] respectively. If narrower product markets are considered, Volkswagen's position would exceed [20-30%] in the following segments: (i) medium cars ([30-40%] on an EEA level and [30-40%] on a Belgian level), (ii) larger cars ([30-40%] on an EEA level and [20-30%] on a Belgian level) (iii) luxury cars ([20-30%] on an EEA level), (iv) sports cars / coupés / cabriolets ([30-40%] on an EEA level and [20-30%] on a Belgian level).
37. The proposed transaction will however not bring about any change to the wholesale and retail distribution of new Volkswagen cars in Belgium as these activities will remain with D'Ieteren. The notifying parties submit that irrespective of the market definition adopted, D'Ieteren's market share would be below 25%.¹⁹ Likewise, VDFin's share on a market for the sale of used cars in Belgium, which could be considered as a neighbouring market to that of the retail sale of new cars, is not significant at less than 5%. In addition, the market investigation in the present case has indicated that neither customers nor competitors are unduly concerned by the proposed transaction.
38. In view of the foregoing, it is concluded that the proposed transaction will neither significantly change the structure of the market nor give rise to other competition concerns.

VI. CONCLUSION

39. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(Signed)

Joaquín ALMUNIA

Vice-President

¹⁹ D'Ieteren is mainly active at the wholesale level. It estimates its market share for new VW Group cars at the *retail* level to be c. [10-20%] in Belgium.