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***Case No IV/M.234 -
GECC / AVIS LEASE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15.07.1992

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To: name(s) of the party(ies)

Dear Sirs,

Subject: Case No. IV/M.234 - GECC / Avis Lease
Your notification of 12.06.1992 pursuant to Article 4 of (EEC)
Council Regulation No. 4064/89

1. The present case concerns the proposed acquisition by General Electric Capital Corporation (GECC), through its subsidiary GE Capital Fleet Services (GECFS), of Avis Lease from Cilva Holdings plc (CILVA).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. GECC forms part of the (US) General Electric Company (GEC). The latter is one of the world's largest and most diversified industrial conglomerates. GECC itself operates primarily in asset management and financial services. GECFS is a leading vehicle fleet management company in North America.
4. Avis Lease specialises in full service vehicle contract hire for periods exceeding 364 days with a variety of fleet management and maintenance programs. It is active throughout Europe. Avis Rent-a-Car Ltd, which rents cars to individuals for periods not exceeding 364 days, is not part of the operation and is being retained by CILVA's subsidiary, Avis Europe.

II. CONCENTRATION

5. The acquisition will be realised through the purchase of the shares of the local companies in [...] ⁽¹⁾ and through the purchase of assets in [...] ⁽¹⁾. This will give GECFS control of the businesses concerned. The operation therefore constitutes a concentration within the meaning of Article 3 of the Regulation. [...] ⁽²⁾

⁽¹⁾ The countries concerned are Belgium, France, Germany, Italy, Luxembourg, Portugal, Spain, Switzerland and the UK.

⁽²⁾ Deleted for publication

III. COMMUNITY DIMENSION

6. Virtually all the leases of Avis Lease are operating leases. These must be distinguished from financial leases.
7. Under an operating lease the risks of ownership are retained by the lessor: the duration of the lease does not cover the major part of the asset's life, ownership is not transferred to the lessee at the end of the lease term, the lease does not contain a bargain purchase option and the present value of the minimum lease payments are less than the asset's fair value. The cost of other related services are included in the lease payments. In the present case this includes vehicles maintenance, repair, servicing, insurance, fleet management services, etc. On the other hand a financial lease primarily functions as a loan by the lessor to enable the lessee to purchase a given asset.
8. Avis Lease is not subject to the authorisation and supervision under the banking laws of any Member State. Its leasing activities have not been treated as financial leasing in any Member State. Its activities do not fall within the scope of the EC Banking Directives⁽¹⁾.
9. Consequently, Article 5(3) does not apply since operating lease turnover is the correct basis for determining the turnover of Avis Lease for the application of the thresholds in Article 1 of the Regulation.
10. The undertakings concerned have a worldwide turnover exceeding 5000 mECU in 1991 (GEC: 48 577 mECU; Avis Lease: 389 m ECU). Both GEC and Avis Lease have a Community wide turnover exceeding 250 mECU. Neither achieved more than two-thirds of their Community wide turnover within one and the same Member State. The concentration therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

11. The operation primarily concerns the contract hire of passenger cars to commercial undertakings over a two to three year period. Neither GECFS nor GECC nor GEC is active in this field within the Community. The only possible related activity of the acquiring party is GE Capital Motor Finance (CMF) and Commercial Equipment Financing (CEF). The former leases vehicles to individuals either through dealers or through the motor vehicle manufacturers. The latter leases commercial trucks and trailers. Both are only active in the UK for financial leasing and have a very small market presence. Consequently, on a narrow product market definition the concentration does not bring about any addition of market share within the Community, and or a very wide definition, the level of existing market activity is insignificant.
12. As regards Avis Lease, there is no Member State, with the exception of Spain, for which its market share exceeds 10%. This is on the basis of a narrow product market definition limited to the contract car hire market which excludes the other two sectors of the company car market, namely fleet management and finance leasing. With respect to Spain, the contract car hire market is at an early stage of development and is growing rapidly.

⁽¹⁾ Council Directive 77/780; Council Directive 89/646

Furthermore, although Avis Lease has a market share [...] ⁽¹⁾, there are two important competitors, Lease Plan and Dial, with comparable market shares.

13. The proposed concentration will therefore not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

V. ANCILLARY RESTRICTIONS

14. The parties have submitted four restrictions as being ancillary to the concentration. These are:

- i) Avis Europe has agreed not to compete with GECFS for a period of five years;
- ii) GECFS will have the use of the Avis Trademark Licence for [...] ⁽²⁾ years;
- iii) under the RAC Services Agreement, Avis Rent-a-Car Ltd will provide certain services to GECFS in relation to [...] ⁽²⁾; the RAC Services Agreement is valid for [...] ⁽³⁾ but may be renewed;
- iv) under the [...] ⁽²⁾ Services Agreement, Avis Europe will provide certain [...] ⁽²⁾ support to GECFS until [...] ⁽³⁾.

15. In order for GECFS to acquire the know-how and expertise of Avis in the contract hire business, it is necessary for the parties to cooperate for a transitional period on the basis of the RAC Services Agreement and the [...] ⁽²⁾ Services Agreement. [...] ⁽²⁾ In this light, a five-year non competition agreement can be accepted.

The use of the Avis Trademark Licence for a period of [...] ⁽²⁾ years can be considered as necessary for GECC to take over the full value of the business being acquired.

As regards the [...] ⁽²⁾ under the RAC Services Agreement, these can be accepted for a period of [...] ⁽³⁾. Such a period is sufficiently long for GECFS to acquire the necessary skill and experience to autonomously operate the business being purchased, and the parties have not put forward valid factors objectively justifying a longer period.

The [...] ⁽²⁾ Services Agreement is of short duration and can be accepted.

Therefore the above restrictions are covered by the present decision to the extent described above.

VI. CONCLUSION

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

For the Commission,

TEXTE RECONSTITUÉ ÉLECTRONIQUEMENT / ELECTRONICALLY RE-CREATED TEXT / ELEKTRONISCH
NACHGEBILDETER TEXT

⁽¹⁾ Exceeding 20%
⁽²⁾ Deleted for publication
⁽³⁾ Not longer than 5 years