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Case No COMP/M.2577 - GE CAPITAL / HELLER FINANCIAL

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23/10/2001
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.2577 - GE CAPITAL/HELLER FINANCIAL Notification of 21.09.2001 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 21 September 2001, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking General Electric Capital Corporation ("GE Capital") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Heller Financial, Inc ("Heller").

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. GE Capital is the holding company for the global diversified financial services division of General Electric Company ("GE"). GE is a diversified manufacturing, technology and services company, incorporated in New York with its headquarters in Stamford, Connecticut, USA. The shares of GE are listed on several stock exchanges, including those of New York, Boston and London. GE is active in various fields including aircraft engines, appliances, financial services, information services, power generation

[1] OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

equipment, lighting, industrial systems, medical systems, plastics, broadcasting and transportation equipment.

4. Heller is a US-based commercial finance company providing a broad range of financing solutions. Its activities include working capital loans, equipment financing and leasing, cash-flow financing, collateral-based financing and small business lending. Heller generates approximately [>50]% of its revenues in the USA.

II. THE OPERATION

5. The proposed operation involves the acquisition of sole control by GE over Heller by way of purchase of shares.

III. CONCENTRATION

6. The concentration concerns the acquisition by GE of sole control of Heller. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Regulation 4064/89, the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2]. Each of GE and Heller have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

8. In the EEA, GE Capital and Heller are both engaged in the provision of commercial finance, and the transaction generates overlaps in the following types of commercial finance: factoring (a form of working capital finance), private equity finance and equipment finance. The parties have submitted that the transaction only gives rise to affected markets in the area of factoring. Neither GE nor Heller has significant market share in private equity finance.

A. Relevant Product Markets

i. Working Capital Finance / Factoring

9. Both parties are active in the provision of working capital finance to small and medium sized enterprises ("SMEs"). This category of finance encompasses those forms of finance that provide liquidity and other services that enable a business to fund its running expenses, such as rent, payroll, raw materials, advertising and other overheads. Working capital finance can be provided through a wide range of means including bank lines of credit, venture capital, equity injections, mortgages on property, extended supplier credit, unsecured loans and loans secured against or linked to a range of assets

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2 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.

including receivables (debts owed to a business). The parties submit that most businesses will employ simultaneously a mix of different forms of working capital finance to fund their activities.

10. Factoring is a form of lending against receivables. At its most basic it involves a business ("the client") contracting to assign some or all of the invoices for sales made to its customers to a factoring company. In return the factoring company provides one or more of the following: (i) a prepayment or advance on the value of the invoices; (ii) invoice collection and sales ledger management services; and (iii) credit insurance protecting the client against a customer's inability to pay an invoice within a period of time.

11. The notifying party has submitted that the factoring services of the parties form part of the provision of corporate banking services, as the lending or advancement of funds is the central component of such financing. In a previous decision[3] the Commission examined factoring but reached no final decision on the precise boundaries of the relevant product market. Likewise for the purposes of this decision it is not necessary to reach a firm view on the relevant product market, since whether a wider market for working capital finance or a narrower product market of factoring is defined, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

ii *Equipment Finance*

12. Both parties are active in the provision of finance to enable business customers to acquire the use of a wide range of assets, ranging from office equipment, IT and telecoms equipment, through to medical equipment and to aircraft and airport and ground handling equipment. Methods of equipment financing include outright cash purchase, loans and other forms of credit provided by banks and other financial arrangements that might be offered by financial institutions and other finance companies.

13. The notifying party has submitted that the relevant market for these services incorporates all methods by which customers seek to acquire the use of assets. Furthermore, the notifying party submits that it would not be appropriate to analyse the markets on the basis of the different types of equipment.[4]

14. For the purposes of this decision it is not necessary to define the precise delineation of the relevant market(s), as the combination of the parties' activities does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it, however the markets are defined.

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3 IV/M.1661 – Crédit Lyonnais / Allianz-Euler/JV, 26.08.1999

4 The Commission examined specialist financing services in two previous cases involving GE (IV/M.659 - GE Capital/Sovac, 17.11.1995 and IV/M.1018 – GE Capital/Woodchester, 7.11.1997).

iii *Private Equity Investment*

15. Private equity in its widest sense describes equity investments in unquoted companies (i.e. companies whose shares are not quoted on any public exchange). The supply of funds for equity investment can comprise equity and debt finance. While it may be possible to consider the supply of debt and equity finance to be separate relevant markets within equity finance, for the purposes of this decision it is not necessary to define the precise delineation of the relevant market(s), as the combination of the parties' activities does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it, however the markets are defined.

B. Relevant Geographic Markets

i *Working Capital Finance / Factoring*

16. The Commission has recognised in previous cases that certain commercial finance and lending activities have historically been linked to national geographic markets[5]. In addition it has noted that the relevant geographic market for corporate finances tends to be national for services to SMEs but international in scope for large corporate clients.

17. In relation to the narrower possible market definition of factoring, the notifying party has stated in its notification that factoring has traditionally been provided on a national basis and that the parties' factoring operations in the EEA are focused on business within the countries in which their respective local subsidiaries are active. As factoring services are generally provided to SMEs, the notifying party has indicated that relatively few factoring customers are of sufficient size to warrant cross-border consumption of factoring services. The provision of factoring services to those that do generate turnover outside their home country is largely done through referrals to factoring companies in the foreign country (known as "export" factoring).

18. For the purposes of this decision it is not necessary to reach a firm view on the relevant geographic market, since whether a wider than national market or national geographic markets are defined, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

ii *Equipment Finance*

19. In a number of previous decisions the Commission has noted that the geographical dimension of competition is national for many aspects of corporate finance and lending services to SMEs[6], but that it may be wider than national for lending services to larger corporations.

20. The notifying party has stated that SMEs trend to deal with financial institutions located close to their place of business, but that there are certain types of assets (for

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[5] For example, IV/M.1661 – Crédit Lyonnais/Allianz-Euler/JV; COMP/M.1910 - Meritanordbanken / Unidanmark, 10.04.2000

[6] For example, IV/M.1018 – GE Capital/Woodchester, 7.11.1997 and COMP/M.1910 - Meritanordbanken / Unidanmark, 10.04.2000

example, commercial and business aircraft) the use of which tends to be sought only by large corporate clients. Large corporate clients may also seek to acquire the use of those assets from foreign vendors, therefore this business tends to be conducted at a trans-national level. Similarly, for those lending services which are arranged by vendors, the vendor may seek to develop arrangements with financiers whereby the financiers will be a specific source of financing for their end user customers in more than one country.

21. For the purposes of this decision it is not necessary to reach a firm view on the relevant geographic market for equipment finance, since whether a wider than national market or national geographic markets are defined, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it, however the markets are defined.

iii Private Equity Investment

22. As for the financial services discussed previously in this decision, the geographic market could be considered to be either national or wider. However, for the purposes of this decision it is not necessary to reach a firm view on the relevant geographic market for private equity investment, since whether a wider than national market or national geographic markets are defined, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it, however the markets are defined.

C. Impact of the Concentration

i Working Capital Finance / Factoring

23. On the basis of national markets for factoring the parties have overlapping activities in three countries: the UK, France and Germany.

24. In the UK the parties would have a combined market share of [5-10]% (GE [0-5]%; Heller [0-5]%)[7]. There are over 70 suppliers of factoring services in the UK[8], including Barclays Bank ([5-10]%), Lloyds TSB ([10-15]%), HSBC ([10-15]%), GMAC ([10-15]%) and RBS/Natwest ([20-30]%).

25. In France the parties would have a combined market share of [20-30]% (GE [0-5]%, Heller [15-25]%). In France there are at least 39 factoring companies. One competitor is of an almost identical size (Eurofactor – Crédit Lyonnais/Euler with [20-30]%), another (Caisse d'Epargne) with [10-15]%, and four competitors with around 5% market shares. In France, the average annual growth rate over the last three years has been [10-20]%.

26. In Germany the parties will have a combined market share of [20-30]% (GE [5-10]%; Heller [10-20]%). The combined entity will continue to face competition from two

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7 Source: UK Factors and Discounters Association

8 Estimates of the number of factoring companies are taken from Factors Chain International

banks (Deutsche Bank and DG Bank) with market shares of [10-20]% and [10-20]% respectively as well as from four companies with market shares between [5]% and [10]%. In total there are estimated to be at least 20 companies providing factoring services in Germany. In Germany, the average annual growth rate over the last three years has been [10-20]%.

27. The parties submit that there is no vertically affected market upstream or downstream of their factoring activities.

28. In relation to the wider possible market of working capital finance, the notifying party has been unable to obtain reliable estimates of the total volume of working capital finance on either an EEA or national level. Nevertheless, GE Capital estimates that the proportion of working capital finance that is represented by factoring in the EEA or on a Member State basis is likely to be in the region of 1-2%. As the parties' factoring operations represent the vast majority of their working capital operations the parties' combined share of working capital finance will be very small and will not raise competition concerns.

29. The proposed concentration therefore does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it in relation to the provision of working capital finance / factoring in the EEA or any Member State therein.

ii Equipment Finance

30. GE has a number of businesses in Europe that provide financing to enable customers to acquire the use of assets. Those that undertake activities which compete directly with Heller in Europe are European Equipment Finance ("EEF"), GE Capital Aviation Services ("GECAS"), GE Capital Corporate Aircraft Group ("GECCAG") and GE Engine Leasing ("GEEL"). EEF is active primarily in the UK, France, Germany and the Nordic Countries and conducts its business with customers through its relationships with equipment manufacturers, equipment dealers and distributors and by developing relationships directly with end customers. Heller, through its Global Vendor Finance Business provides finance to SMEs to enable them to acquire the use of various types of information technology and telecommunications equipment. Heller also has a Commercial Equipment Finance business which operates through a newly-formed associated partnership with a major financial institution in the UK ("Partnership") which focuses on higher-value assets.

31. On the basis of information provided to the Commission by the notifying party in relation to the parties' combined share of financing of business equipment, the parties' have overlapping activities in Austria, Belgium, Denmark, France, Germany, Italy, the Netherlands, Sweden and the UK[9]. However, in none of these countries did the combined market share exceed 15%, and the increment is only greater than 1% in the UK. The horizontal overlaps therefore raise no concerns that the concentration may create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it in relation to the provision of equipment finance in the EEA or any Member State therein.

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9 Source: The Finance and Leasing Association ("FLA") and LeaseEurope, Finansbolagers forening, Dutch Leasing Association and World Leasing Yearbook

32. In order to assess the potential competitive impact of this transaction on vertically related markets, the parties have performed a review of their manufacturing activities where they might have a share of more than 25%. While Heller has no such activities, the only products in respect of which GE provides finance to customers and in respect of which it may have a share of 25% or more are certain medical equipment and aircraft engines.

33. As far as medical equipment is concerned, Heller has not provided and had, according to the notifying parties, no plans to provide finance to enable customers to acquire the use of such equipment. The addition of Heller to GE Capital should therefore bear no competitive effect as a result of which effective competition in the medical equipment sector would be significantly impeded in the Common Market or a substantial part of it.

34. On the market for large commercial and regional jet aircraft engine, the Commission agrees with the parties' submission that the combination of GE Capital's commercial aircraft financing activities through GECAS with Heller's Aircraft Finance Division ("HAFD") will not strengthen GECAS's competitive position and therefore bear no impact on the respective engine markets. This situation is due to Heller's de minimis role in aircraft financing and resulting minimal increment to GECAS's share.

35. Similarly to aircraft financing activities, Heller's very small amount of commercial aircraft engine leasing will not materially affect GE's position as a engine lease provider, through GEEL, the joint offering of GECAS and GE Aircraft Engines ("GEAE"), so as to impact GEAE's position on the market for large commercial and regional jet aircraft engines.

36. In the light of the above, neither the horizontal nor the vertical relationships brought about by this concentration raise concerns that it may create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it in relation to the provision of equipment finance in the EEA or any Member State therein.

iii Private Equity Investment

37. The European private equity sector is valued at approximately EUR [60-80] billion, of which debt finance is estimated to account for EUR 40-50 billion[10]. Of the total Europe private equity sector, debt-financed transactions taking place in the UK account for around EUR 20-25 billion[11].

38. The only national market to be considered is the UK. However, whether the market is considered to be that for the provision of debt finance, equity finance, or both, neither of the parties has a market share which exceeds 1% whether considered on a EU-wide or UK-wide basis. The concentration therefore raises no concerns as to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it in relation to the provision of private equity investment in the EEA or any Member State therein.

10 Source: CMBOR

11 Estimate by Heller based on an analysis of the CMBOR Summer 2001 Review.

VI. CONCLUSION

39. 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

Mario MONTI
Member of the Commission