COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.06.2004

SG-Greffe(2004)
D/202569/202570/202571

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

**To the notifying parties**

Dear Sir/Madam,

**Subject: Case No COMP/M.3090 – Volkswagen / Offset / Crescent / LeasePlan /JV**
**Notification of 24/05/2004 pursuant to Article 4 of Council Regulation No 139/2004**[1]

1. By the notified transaction Volkswagen Financial Services and two financial investors acquire from ABN Amro 100% of the shares in LeasePlan, which is active in the leasing and fleet management business.

2. […]

## I. THE PARTIES

3. **Volkswagen Financial Services** ("VWFS") is the automobile financial services provider for the various brands of the Volkswagen Group. It belongs to the Volkswagen Group ("VW"; world-wide turnover: 87 billion EUR).

4. **Offsets** is owned by the government of the Emirate of Abu Dhabi. It is active under the name of "Mubadala" and invests funds in different business areas in the UAE and abroad. It is not active on any relevant, related or neighbouring markets.

5. **Crescent** belongs ultimately to a Saudi Arabian family. It is not active on any relevant, related or neighbouring markets.

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1 OJ L 24, 29.1.2004 p. 1.

6. **LeasePlan** is active in the economic sector of full fleet leasing and management services for light vehicles (up to 3,5 t), and to a substantially lesser extent also short term rental of cars and financial lease. LeasePlan is incorporated in the Netherlands and achieves a world-wide turnover of […] billion EUR.

## II. THE OPERATION

7. The transaction consists in the acquisition of sole control over LeasePlan by a newly created company. VWFS will hold 50% of the shares of this company, the other 50% will be held by a vehicle company; Offsets and Crescent will each hold 50% of the shares of this company. The three parties have signed a Joint Venture Agreement which provides for joint control by the three acquirers.

## III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2]. Each of Volkswagen and LeasePlan 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.

## IV. RELEVANT MARKETS

9. The concentration concerns the following markets:

10. According to the parties, there is an affected market for "**full fleet leasing and management services for passenger cars and light commercial vehicles**". The undertakings active on this market offer to their clients a combination of two services: (a) funding in form of operating leasing, and (b) outsourcing of the fleet and its management. The latter comprises a variety of management services like advisory services in relation to fleet structure and the choice of vehicles, services regarding the acquisition of the vehicle, and services during the life-time of the vehicle like administration, registration, maintenance, tyres, fuel and oil etc. In past decisions[3], the Commission has left open the question whether a distinction between "funded" and "unfunded" services, i.e. between fleet management services with and without funding/leasing services has to be made. The parties put forward that there is a single product market. They say that the typical customer's intention is to outsource its fleet: Depending on the nature and the financial situation of the customer and other parameters, the customer’s needs may vary significantly, and may include financing or may not. Moreover, over the life-time of a framework contract between the service provider and the customer, switches between funded and unfunded services may occur. As regards the supply side, the parties say that all competitors offer both funded and unfunded services. The question can be left open in this case too, as the

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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, p. 25).

[3] Notably M.3029 – Société Générale/AIHL Europe.

market shares of the parties do not differ very much in both segments, and no competition concerns arise on the basis of either market definition.

11. Geographically, the markets are national in scope. This is due to several factors: national specialities in tax and duty regimes, and also different road conditions (different levels of wear and tear) lead to differing needs and preferences of the customers; there is no standardisation of products at European level; the markets differ considerably in terms of market size and maturity (the markets in the NL and in the UK being the most mature ones, the markets in the new MS being in an incipient stage and still relatively small).

12. A second affected product market is that of **short term car rental**. In its decision M.2510 – Cendant/Galileo – the Commission has made a distinction between corporate short term rental and leisure car rental. The parties contest this subdivision. However, the question does not have to be decided in the present case, as the concentration does not lead to competition concerns in any case. The markets are considered national in scope; the parties achieve combined market shares of more than 15% in Germany and the Belgium.

13. The Parties further mention the (national) markets for **finance lease**. There are overlaps in Germany, the Czech Republic and Slovakia.

14. As Volkswagen achieves market shares of more than 25% in some markets for **vehicles**, the car manufacturing market is affected from a vertical point of view. In previous passenger vehicle cases the Commission[4] has left open both product and geographic market definitions, the narrowest possible market definition being separate segments in individual countries. With respect to the product market, the following market segmentation according to vehicle categories is possible:

- A: mini cars
- B: small cars
- C: medium cars
- D: large cars
- E: executive cars
- F: luxury cars
- S: sport cars
- M: multi-purpose cars
- J: sport utility vehicles.

15. The boundaries between the different segments are blurred by different factors. This leads to the conclusion that cars in one segment are subject to at least some

[4] Cf. Case IV/M.1515 – Renault/Nissan, par. 19, with further references.

competitive pressure from cars in neighbouring sectors.The precise market definition can be left open in the present case, too, as in no case competitive concerns arise.

16. The same is true with regard to the geographic market definition. There are some indications that the market is EEA-wide; on the other hand, from a customer's point of view, some national differences still exist with respect to prices, market penetration of different brands and other aspects. It can be assumed that the markets in the Acceding Countries have been national in scope until Accession, but that a tendency towards Europeanization exists. However, this question can be left open, too. Even on the basis of the narrowest market definition – which would lead to high market shares of the parties especially in the "B segment" in the Czech and Slovak Republics – no competition concerns arise.

17. However, there are no indications that Volkswagen is dominant on any of these markets, and it can be excluded that the concentration will lead to a significant strengthening of VW's position on these markets. The parties stress that one of the competitive advantages of LeasePlan on this market is its independence from car manufacturers. The customers expect independent advice on the question which vehicles to chose. It is Volkswagen's intention to let the target company continue this policy after the merger, which is one of the reasons why VW decided to acquire only joint control together with two "neutral" financial investors. If, after the merger, LeasePlan continues to advise its customers "independently", no change in Volkswagen's market position as a car manufacturer will occur. If LeasePlan's policy changes after the merger, this might lead to a minor increase in Volkswagen's market shares, but there are no indications that this increase will be so important that the creation of a dominant position or another type of significant impediment to effective competition will occur.

## V. COMPETITIVE ASSESSMENT

### V.1. Market for short term car rental

*Germany*

18. In *Germany*, the market share of VWFS' subsidiary Europcar on the market for short term car rental is [20 - 30] %, LeasePlan's position is de minimis (less than [0 - 5] %). Sixt has a market position equivalent to that of Europcar; Avis and Hertz have important market positions, too. The market shares are very similar if the business and leisure markets or market segments are viewed separately. Under these circumstances, competition concerns do not arise.

*Belgium*

19. In *Belgium,* the concentration will lead to the creation of a clear market leader, with a market share of [30 - 40] % (LeasePlan: [20 - 30] %, Europcar: [10 - 20] %); these figures are based on the number of rental days. The main competitor would be Avis, with a market share that rose from 17% in 2001 to 23% in 2003, Hertz (13%), Budget, Interleasing and ING (4% to 7% each).

20. If the leisure and the business markets are looked at separately, the combined market share is slightly higher in the business market ([40 - 50] %, resulting from the addition of ([30 - 40] % of LeasePlan and [0 - 10] % of Europcar); the market shares of the

competitors are not known. However, the general picture is the same as for the overall market for short term car rental. Even without a further investigation of the market, it can be assumed that the merged entity's margin of manoeuvre is sufficiently constrained by the existing competitors. In this context, it has to be borne in mind that one of the specific characteristics that distinguishes the business market from the leisure market is that the services are provided on the basis of framework contracts which are awarded on the basis of bidding procedures. This should give the customers a significant degree of negotiating strength. Furthermore, if – contrary to the submission of the parties – a separate market for business car rental is defined, leisure car rental has to be considered as a closely neighbouring market. Business customers can easily switch to the suppliers active on that market, e.g. by reserving cars via the Internet. On the segment for leisure customers, the combined market shares of the parties is [20 - 30] %. As LeasePlan's position is less important on this segment, the market share addition is low (around [0 - 5] %).

### V.2. Market for full fleet leasing and management services

*Czech Republic*

21. As mentioned above, LeasePlan's market share was, according to the parties [50 - 60] % and that of VWFS (via its subsidiary Europcar Fleet Services) [0 - 10] %[5] or [0 - 10] %[6]. Business Lease (estimated market share: [10 - 20] %), Hertz/ALD (8,5%), CP Leasing (5,0%) and Charouz (belonging to the Ford group via he FCE Bank Ltd.) are named as the main competitors of the parties. The market investigation has shown that the parties' market shares are probably even slightly higher, as it seems that the parties have overestimated the market position of some of their competitors. However, for several reasons these market shares do not point towards market dominance. First, it has to be noted that the market is at an early developing stage in the Czech Republic. The legal provisions in this field are consolidated, and the conditions for market development are met. However, corporate customers are just beginning to make use of the relevant services. This is shown by the small volume and rapid growth of the market. In 2003 the relevant services were provided for less that 20 000 vehicles which compares to 1,6 million in the UK or to 700 000 in the NL. In 2001, the market volume was at 13 000 vehicles, which results in a growth of 52% in two years. Another indication for the immaturity of the market is that until now, the services are provided mainly to Czech subsidiaries of multinational companies. Local companies seem not to rely on these services yet. There are no apparent reasons why an expansion should not be possible. There are notably no indications that LeasePlan would enjoy a first mover advantage that cannot be surmounted by new competitors. The immaturity of the market is corroborated by the fact that some of the market participant's market shares vary considerably. While LeasePlan's market share has been stable for the last three years, VWFS' share raised from [0 - 10] %. One competitor's share of the Czech market halved in the same period.

22. Market entry is not difficult. There are no reasons why banks, financial services subsidiaries of car manufacturers, other international independent specialised leasing companies or car rental companies should be unable to enter the market. Given the

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[5] […]

[6] […]

market growth, these undertakings have incentives to enter the market or, if they are already present on the market, to try to expand their market shares. VWFS is an example of a company which entered the market in 2003. Arval, another internationally active company, is mentioned as an entrant in 2002. The possibility and incentive of market entry in accession countries is underlined by an independent market study, which says: "*With Western markets increasingly becoming saturated, it is the emerging markets on the periphery of the EU that are beginning to offer successful Western leasing companies new opportunities for expansion. This expansion is occurring principally either through the direct establishment of new subsidiaries at local level, or through partnerships with existing domestic players in these new markets*[7]*".*

23. Moreover, it cannot be expected that the VW group will try to leverage its strong position on the Czech market for passenger cars ([50 - 60] % on an "all passenger car" basis, up to ([60 - 70] % in the different car categories the Commission has identified as (possible) relevant markets in past decisions) into the full fleet leasing and management services market. The market situation in the car market is likely to change. Moreover, it is still the end customer who decides on which car make is purchased. Any attempt by the lessor to favour cars of the VW group would undermine LeasePlan's attraction and competitive advantage as an "independent" operator and be counter-productive.

24. Finally, it should be noted that none of the customers contacted expressed concerns with respect to the merger. These customers are mainly local subsidiaries of multinational companies. These are able to bundle their demand on several national markets and so exert a considerable buyer power.

25. The market situation does not change significantly, if only funded services are considered. In this case, according to the parties' figures, their combined market share is slightly lower ([50 - 60] %). It seems that the Czech market for unfunded services is de minimis. In any case, the parties' activities on the market segment for unfunded fleet management services in the Czech Republic can be neglected: for only 487 cars such services were provided by the parties.

*Slovakia*

26. What was said for the Czech market, applies *a fortiori* for the Slovak market. As mentioned above, the parties' combined market share was around [50 - 60] %, with an increment of [0 - 5] %. Only Business Lease is mentioned as an important competitor, with a market share of [30 - 40] %.

27. The Slovak market is even smaller (4 300 vehicles) and seems to be at an even earlier stage of development (market growth between 2001 and 2003: 169%). VWFS services entered the market in 2002.

28. If the market segments for unfunded and funded services are viewed separately, the picture is as follows: Neither party offers unfunded services. As regards funded services, the parties' combined market share should be slightly higher than on the overall market.

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7 Datamonitor, The European Fleet Market 2003, New Opportunities in a Changing Market, p. 29.

29. In any case, due to the relatively strong position of Business Lease, the incipient nature of the market, and the lack of significant barriers to entry, no competitive concerns arise on the Slovak market.

*Other countries*

30. In several EEA Member States one of the parties (LeasePlan) achieves high market shares, but no overlaps occur. This is the case for Norway ([60 - 70] %) and for Hungary and Sweden (market shares over ([30 - 40] %). As Volkswagen is not active in these countries, competitive concerns can be excluded. The same is true for six other countries, where the concentration gives raise to overlaps, but the combined market shares are below 40% (Germany: [10 - 20] %, Italy: [20 - 30] %, Netherlands: [20 - 30] %, Portugal: [30 - 40] %, Spain: [20 - 30] %, UK: [0 - 10] %; data provided by the parties – according to an independent market study from Datamonitor the market share in Germany would be higher – around 25% -, but the conclusion remains the same). In all of these countries, important competitors are active. The competitors are mainly subsidiaries of car manufacturers, banks or car rental companies. The picture is not significantly different, if funded and unfunded services are distinguished.

31. In Portugal, the merger will lead to the creation of a market leader with a market share of [30 - 40] %, which is considerably higher than those of the following competitors. However, the market share is not indicative of market dominance. The Portuguese market is still developing, the penetration rate is currently still low; with such market maturing over time, total market volume will increase and more entrants will have the effect of reducing the first entrant's market share. No other factors point towards competitive concerns relating to the Portuguese market.

### V.3. Market for finance leasing for vehicles

32. Both VWFS and LeasePlan offer finance leasing for vehicles in Germany, the Czech Republic and Slovakia. VWFS's market shares in these countries are between [20 - 30] % and [30 - 40] %. However, LeasePlan's position on these markets is negligible (below [< 1] %). Moreover, with the acquisition of LeasePlan, VWFS does not take out of the market a strong potential competitor. Finance lease services are generally locally offered via the car dealers; this explains why LeasePlan, which does not have a dealer network, has not achieved higher market shares even in the more developed markets like Germany. Finance leasing is not the core business of LeasePlan, and its modest sales on this market can be seen as a by-product of the fleet management services. Consequently, it cannot be expected that the notified merger will change much to VWFS' market position.

## V.4. Market for passenger cars

*Czech Republic*

33. VW enjoys a very strong market position in the Czech Republic. According to the data provided by the parties, VW would have a market share of [50 - 60] % on an overall Czech market for all passenger cars, being particularly strong on the "B segment" for small passenger cars, where the market share would be [60 - 70] %. Despite these high shares, the concentration will not lead to a strengthening of a dominant position through the concentration or any other form of significant impediment to effective competition.

34. First, even if it is assumed that small cars belong to a separate product market, the suppliers on that market would be subject to competitive pressure from the suppliers on the markets for mini ("A segment") and medium size passenger cars ("C segment"). On these segments, the market position of VW is less important: VW is not active on the A segment, its market share on the C segment is [40 - 50] %.

35. Second, VW may not b able to keep its strong position on the Czech Republic. Its historically strong market position is due mainly to the position of its subsidiary Škoda as the only significant car manufacturer in the Czech Republic. With the accession of the Czech Republic to the European Union the importance of this factor is going to decrease, and it can be expected that the share of imported passenger cars will raise. Moreover, other car manufacturers are building plants in the Czech Republic and will be able to sell vehicles as a domestic supplier in the coming years.

36. Third, it cannot be expected that VW will be able to leverage its position on the full fleet leasing and management services market on the market for passenger cars. Even if the customer sources out the fleet management and, and the service provider has the opportunity to suggest the purchase of VW group cars, it is still the customer who takes that decision. Moreover, only a small part of the cars sold by VW in the Czech Republic is sold via LeasePlan. Even if this proportion is expected to grow in the future, it will not be so important that a possible business strategy by LeasePlan to systematically promote the sale of VW group cars would have any significant impact on the market position of VW on the upstream market for passenger cars. Finally, in this context, it has to be noted that two financial investors will exert joint control over LeasePlan. These will have no incentive to allow VW to use its influence over LeasePlan in such a way that VW group cars are favoured over those from other car manufacturers.

*Other EEA countries*

37. The same reasoning applies *a fortiori* to the Slovak Republic and to other EEA countries. In Slovakia, the market shares of VW on the upstream market for passenger cars and the combined market shares of the parties on the downstream market are slightly lower than in the Czech Republic ([50 - 60] % on the overall market for all passenger cars; [60 - 70] % on the "B segment" for small cars; the market shares of VW have already come down in the last years; combined market share of [50 - 60] % on the market for full fleet leasing and management services). In other EEA countries, including Germany, VW's home market, the parties' market shares are even lower. The same conclusion is true, if the market is EEA-wide.

## VI. CONCLUSION

38. 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 (EC) No 139/2004.

For the Commission

***signed***
***Franz FISCHLER***

Member of the Commission