

***Case No COMP/M.5217 -
GEFA / PEMA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/08/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06/08/2008
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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.5217 – GEFA / PEMA
Notification of 4 July 2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

I. INTRODUCTION

1. On 04/07/2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking GEFA Gesellschaft für Absatzfinanzierung mbH ("GEFA", Germany) controlled by the Société Générale group ("SG", France) acquires within the meaning of Article 3(1)(b) of Council Regulation ("Merger Regulation") control of the whole of the undertaking PEMA GmbH ("PEMA", Germany) by way of purchase of shares.
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 and the EEA Agreement.

II. THE PARTIES AND THE CONCENTRATION

3. **GEFA** is active in financing solutions (such as loans and financial leasing) for trucks and freight carrier fleets. It belongs to SG, a banking group active in the areas

¹ OJ L 24, 29.1.2004, p. 1.

of retail banking and financial services, global investment management and corporate and investment banking in 77 countries worldwide.

4. **PEMA** is active in truck contract hire/operating leasing (full-service rental of heavy trucks and trailers)² in several European countries. Its origin and main centre of business activity is in Germany. It is currently owned by Mr. Thomas Manns [...] and Ms. Stefanie Manns [...].
5. According to the Share Purchase Agreement concluded on 2 July 2008, GEFA intends to acquire all the shares in PEMA and, thus, sole control over PEMA within the meaning of Article 3(1)(b) of the ECMR.

III. COMMUNITY DIMENSION

6. The parties have a combined aggregate worldwide turnover in excess of EUR 5 billion [...] and each of them has a Community-wide turnover in excess of EUR 250 million [...]. The parties do not achieve more than two thirds of their Community-wide turnover in one and the same Member State. The transaction therefore has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKETS

Product Markets

7. The parties submit, in line with previous Commission practice, that operating leasing and financial leasing constitute separate product markets due to their distinct business models and offerings to the consumer, particularly in relation to the ownership status of the good and the risks associated with the leasing.³ Indeed, in view of their considerably different underlying business attributes, it can be concluded that for the purposes of the present operation operating leasing and financial leasing constitute separate product markets.

Operating leasing

8. Operating leasing refers to a type of lease where the risks of ownership are retained by the lessor while the lease duration does not cover any major part of the asset's life. Ownership is not 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.
9. Previous Commission practice left open the question of whether the operating leasing market should be sub-divided into segments for light trucks, medium-duty trucks and heavy-duty trucks or into short-term (1-365-day) and long-term (12- to

² The notifying party submits that operating leasing for trucks and trailers is synonymous to "truck contract hire".

³ Case No. IV/M.234 – GECC/Avis Lease.

48-month) rentals.⁴ However, for the purpose of the present transaction, the exact market definition can be left open since the concentration does not raise any competition concerns under any alternative market definition.

Financial leasing

10. Financial leasing primarily functions as a loan by the lessor to enable the lessee to purchase a given asset. 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. After the lease, the lessee usually has the option to acquire ownership of the asset for the consideration of the residual value.
11. The notifying party submits that this market includes not only financial leasing but also all other types of financing solutions such as instalment purchase and regular loans. In previous cases, the Commission however found indications towards a segmentation of the relevant product market according to the type of the financial solutions actually provided, e.g. leasing vs. other types of financial products such as various kinds of loan arrangements. Such segmentation would mainly be based on demand-side considerations such as *inter alia* customers' preference for the accounting (e.g. on- or off-balance sheet) of one product versus another.⁵ In the present case, the notifying party has also provided market information for the narrowest possible market definition, i.e. that for financial leasing for heavy road transportation equipment (trucks and trailers). However, for the purpose of the present transaction, the exact market definition can be left open since the concentration does not raise any competition concerns under any alternative market definition.

Geographic markets

Operating leasing

12. According to previous Commission practice, market for operating leasing is national in scope. This is due to the differentiated consumer practices and national preferences as to e.g. brands, existing language barriers and difficulties concerning cross-border transactions.⁶
13. The notifying party submits that the market is developing more and more on a European-wide level and that, therefore, the delineation of an EEA-wide market might be warranted. However, for the purpose of the present transaction, the exact geographic market definition can be left open since the concentration does not raise any competition concerns under any alternative market definition.

Financial leasing

⁴ IV/M.234 – GECC/Avis Lease; COMP/M.1739 – Iveco/Fraikin; COMP/M.1810 – VW/Europcar; COMP/M.2540 – Fidis/SEI/JV; COMP/M.3987 – Fidis Renting/Leasys; COMP/M.4420 – Credit Agricole/Fiat Auto.

⁵ COMP/M.2970 – GE/ABB Structured Finance

⁶ COMP/M.1739 – Iveco/Fraikin; COMP/M.1810 – VW/Europcar; COMP/M.2540 – Fidis/SEI/JV; COMP/M.3987 – Fidis Renting/Leasys; COMP/M.4420 – Credit Agricole/Fiat Auto

14. The notifying party submits that the geographic scope of the market for truck and trailer financing solutions is at least national, but tends to be more and more European-wide. This was also acknowledged by the Commission in its previous practice, in particular with respect to financing services to larger corporations since those companies regularly compare offers for financing solutions on an international level.⁷ However, for the purpose of the present transaction, the exact geographic market definition can be left open since the concentration does not raise any competition concerns under any alternative market definition.

V. COMPETITIVE ASSESSMENT

15. GEFA is only active in financial leasing services whereas PEMA mainly focuses on operating leasing services. PEMA has also some operations in (truck) financial leasing services in Slovakia and the Czech Republic.⁸

Horizontal Issues

16. The transaction does not lead to any horizontal overlaps, with the exception of the Czech and Slovak markets for the provision of financial leasing services for heavy road transportation equipment (trucks and trailers) where both parties are active.⁹ However, their combined market shares in these two countries are below 10%, amounting [5-10]% (GEFA: [5-10]%; PEMA: [0-5]%) in the Czech Republic and [0-5]% (GEFA: [0-5]%; PEMA: [0-5]%) in Slovakia.

Vertical Issues

17. The transaction gives rise to a vertical relationship between GEFA's in financial leasing which is upstream of PEMA's downstream activities in operating leasing. However, the only markets affected by the operation are in the Czech Republic, the only country where PEMA's market share in operating leasing exceeds 25% (in both the short- and long-term sub-segments of the heavy commercial vehicle segment).

18. In particular, PEMA's market share in the Czech market for operating leasing for heavy commercial vehicles (HCV) (>12t) –the only segment where PEMA is active – amounts to [30-40]% in the "overall" market for operating leasing of HCV ([30-40]% and [30-40]% in the sub-segments of short-term and long-term leasing respectively).¹⁰

⁷ COMP/M.2970 – GE/ABB Structured Finance; COMP/M.4199 – De Lage Landen/Athlon.

⁸ PEMA is also active in the sales of new and used trucks and trailers. However, the market shares would be approximately [0-5]% and [5-10]% in the market for sales of new vehicles and used vehicles respectively. SG is also active in the market for full fleet leasing and management services via its subsidiary ALD which offers car fleet management (full-service) solutions for passenger cars. However these services are passenger cars related only; they do not relate to truck contract hire. As horizontal and vertical competition issues can be dismissed in these markets, they will not further be assessed in this decision.

⁹ The parties do not overlap in the market for the provision of operating leasing services as GEFA has no such activities.

¹⁰ In Germany and Slovakia, PEMA would have market shares of above 15% but below 25%, whereas in the other countries where PEMA is present, (Denmark, Poland, Romania and Switzerland) its market shares would not exceed 10% under any alternative market definition.

19. The notifying party nevertheless argues that these market shares do not draw a realistic picture of the competitive environment in the truck and trailer operating leasing market, as the markets in the Eastern European countries are very young and still emerging. In any event, there is no risk of input foreclosure of PEMA's competitors in operating leasing for trucks as the parties will have a combined market share of only [5-10]% on the upstream market for financial leasing for trucks and trailers in the Czech Republic. Moreover, operating leasing companies seem to use different ways to finance truck acquisitions. Even if there are indications that financial leasing might be a separate market due to its specific characteristics, it nevertheless appears that some competitive pressure could also result from long-term loans by financial institutions (such as BNP Paribas/Artegy and GE Capital) and the possibility to finance by own resources, which is particularly relevant to companies that are vertically integrated with a truck manufacturer (such as Mercedes-Benz/Charterway and Fraikin/Iveco).
20. Similarly, there is no risk of customer foreclosure for GEFA/PEMA's competitors on the upstream market for financial leasing in the Czech Republic (such as Deutsche Leasing, Iveco Finance, Euro Leasing and VR Leasing) given that PEMA finances via financial leasing only a minimal part of its total truck fleet [...].
21. Thus, the vertical relationship does not give rise to any serious doubts as to the transaction's compatibility with the common market, in particular since the new entity will not have a significant market position even on the narrowly defined Czech markets for operating leasing and financial leasing, mostly due to the high fragmentation of each market and the existence of other strong competitors.

VI. CONCLUSION

22. 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)

Neelie KROES
Member of the Commission