

***Case No COMP/M.5568 -
VOLKSWAGEN/ FLEET
INVESTMENTS/
LEASEPLAN
CORPORATION JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/08/2009

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EUROPEAN COMMISSION

Competition DG

Markets and cases III: Financial services and Health-related markets

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 19/08/2009
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

**Subject: Case No COMP/M.5568 - VOLKSWAGEN/ FLEET INVESTMENTS/
LEASEPLAN CORPORATION JV
Notification of 14 July 2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

I. INTRODUCTION

1. On 14 July 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Volkswagen Bank GmbH ("Volkswagen Bank", Germany), belonging to the Volkswagen AG ("Volkswagen", Germany), and Fleet Investments BV ("Investments BV", the Netherlands), belonging to the Metzler Group, acquire, within the meaning of Article 3(1)(b) of the Council Regulation, joint control of the undertaking LeasePlan Corporation N.V. ("LeasePlan Corporation", the Netherlands) by way of purchase of shares.

II. THE PARTIES

2. Volkswagen is active in the development, manufacture and sales of cars and light commercial vehicles including spare parts and accessories, vehicle distribution, financial services related to the distribution and financing of cars and commercial vehicles, fleet management solutions and R&D.
3. Investments BV is an investment and holding company and part of the Metzler Group. The Metzler Group's activities are focussed on providing individual advice to corporate and institutional customers and high net worth private clients in five core

¹ OJ L 24, 29.1.2004 p. 1.

business areas: asset management, corporate finance, equities, financial markets and private banking.

4. LeasePlan Corporation is active in full fleet leasing and management services for light vehicles, short term car rental, finance lease and insurance brokerage.

III. THE OPERATION

5. 97.9% of the issued and paid up share capital of LeasePlan Corporation is owned by Global Mobility Holding B.V. ("Global Mobility Holding").² Shares in Global Mobility Holding are owned by Volkswagen Bank (50% of shares), MDC-LP Holding S.a.r.l. ("MDC Holding") (25% of shares) and by Crescent Beteiligungsverwaltung GmbH ("Crescent") (25% of shares).
6. The acquisition of joint control by Volkswagen, MDC Holding and Crescent has been cleared by the Commission in the case M. 3090 *Volkswagen/Offset/Crescent/Lease Plan/JV*.³
7. MDC Holding and Crescent intend to sell their shares in Global Mobility Holding B.V. to Volkswagen. Volkswagen will sell those shares to Investments BV. As Volkswagen's designated transferee of the shares, Investments BV will accept transfer of the shares directly from the sellers.

Single operation

8. The Parties submit that the above transactions constitute a single operation as the purchase of MDC Holding and Crescent's shares by Volkswagen will not result in structural change on a lasting basis because the above shares will be transferred directly to Investments BV. Therefore the first transaction will only result in a temporary change of control, which cannot be considered as a concentration in the light of ECMR.⁴ Consequently, the operation to be analysed in the merger proceedings is the acquisition of joint control by Volkswagen and Investments BV over the LeasePlan Corporation.

Joint control

9. Post transaction LeasePlan will be jointly controlled by Volkswagen and Investments BV due to the following reasons:
10. Firstly, both Parties will have an equal number of shares in LeasePlan Corporation.
11. Secondly, according to the JV's Agreement the Supervisory Board of LeasePlan Corporation will be composed of two directors appointed by Volkswagen and two directors appointed by Investments BV. The quorum required for the meetings of the Supervisory Board is at least one director appointed by Volkswagen and one director appointed by Investments BV.

² The remaining 2,1 % of the shares are owned by Stichting Werknemersparticipatie LPC.

³ See: case M. 3090 *Volkswagen/Offset/Crescent/Lease Plan/JV*.

⁴ See: para. 28 -35 of Commission Consolidated Jurisdictional Notice.

12. The Supervisory Board shall decide by unanimity matters such as: appointment or dismissal of the CEO, annual budget and business plan. The Supervisory Board shall decide also, by 75% majority, the appointment of other Board Members. On the basis of the above it has to be concluded that post transaction Volkswagen and Investments BV will have each veto right as to strategic decisions of LeasePlan and therefore post – transaction Volkswagen and Investments BV will exercise joint-control over the JV.
13. As a result of the above transaction, Global Mobility Holding’s subsidiary LeasePlan Corporation will be jointly controlled by Volkswagen and Investments BV within the meaning of Article 3(1)b of Council Regulation (EC) 139/2004.

IV. COMMUNITY DIMENSION

14. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁵ (Volkswagen - EUR 113,808 million,⁶ Investments Group - EUR [...] million and LeasePlan Group - EUR 5,078 million). Each of the undertakings has a Community-wide turnover in excess of EUR 250 million (Volkswagen EUR [...] million, Investments Group – [...] million and LeasePlan Group – [...] 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. RELEVANT MARKETS

Full fleet leasing and management services

15. 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.⁷ More specifically, fleet leasing comprises *inter alia*: services related to the funding of the vehicle fleet by (operating) leasing, advisory services in relation to the fleet structure and the choice of the vehicle to be acquired as well as services regarding acquisition of vehicles in the name and for the account of the leasing company as well as the services during life-time of the vehicle, such as administration, car registration, insurance, replacement car management, maintenance etc.
16. In its previous decisions the Commission left open whether the market for full fleet leasing and management services could be further subdivided into funded and unfunded leasing.⁸
17. In the past the Commission defined the markets for full fleet leasing and management services as national in scope due to several factors, such as national specialities in tax

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p. 1).

⁶ Excluding Porsche.

⁷ See: case M. 3090 *Volkswagen/Offset/Crescent/Lease Plan/JV*, para. 10

⁸ See: case M. 3090 *Volkswagen/Offset/Crescent/Lease Plan/JV*, para. 10; and case M. 5250 *Porsche/Volkswagen*, para. 36-37.

and duty regimes, different road conditions, different levels of wear and tear leading to differing needs and preferences of the customers etc.⁹

Finance lease for vehicles

18. Finance lease for vehicles functions as a funding by the lessor to enable the lessee to purchase a vehicle and is available for the individual vehicles. Finance lease could be distinguished from the full fleet leasing as the leasing agreements for finance lease are concluded with the main purpose of financing the vehicles (as opposed to outsourcing fleet services in case of full fleet leasing). Financing the vehicles may be achieved in particular in a form of leasing in which the customer obtains ownership of the vehicle at the end or the vehicle will be immediately sold to a third person by the lessor.
19. In its previous decisions the Commission described the market for finance lease as national in scope.¹⁰

Short term car rental

20. Short term car rental refers to provision of cars for an individually agreed duration. Such cars could be taken over by the user at certain locations (e.g. airports, railway stations). The Commission considered in its previous decisions that the short car rental is national at scope.¹¹

Insurance brokerage services (distribution of insurance products)

21. Insurance brokerage services is a market of the distribution of insurance services in general, comprising distribution by direct writers, tied agents and intermediaries such as banks and brokers.¹² The market for insurance brokerage services could be further subdivided into life and non-life insurance as well as on the basis of the distribution chain or type of the product, however, the Commission decided to leave the exact market definition open.
22. The Commission considered insurance brokerage services as national at scope.¹³

Banking services

23. In its previous decisions the Commission has held that banking services can be divided into three main segments: (i) retail banking, (ii) corporate banking and (iii) financial market services.¹⁴

⁹ See: case M. 3090 *Volkswagen/Offset/Crescent/Lease Plan/JV*, para. 11; and case M. 5250 *Porsche/Volkswagen*, para. 48

¹⁰ See: case M. 3090 *Volkswagen/Offset/Crescent/Lease Plan/JV*, para 13

¹¹ See: *Ibid.*

¹² See: case M. 1307 *Marsch & McLennan/Segdwick*

¹³ See: case M. 4284 *Axa/Winterthur*, para. 15, 19.

¹⁴ See: case M. 4844 *Fortis/ABN Amro Assets*.

24. Retail banking generally comprises all banking services to private individuals and very small enterprises. In the retail banking the Commission distinguished the following product markets: personal current accounts, savings accounts, consumer loans, mortgages, distribution of mutual funds, and private banking services.
25. Corporate banking comprises banking services to large corporate customers ("LCC's") and smaller commercial clients such as small and medium-sized enterprises ("SME's").¹⁵
26. Financial market services comprise services such as trading (on an agent or riskless principal basis) in securities, bonds and derivatives as well as foreign exchange trading, money market operations (i.e. trading in treasury bills and commercial paper from banks and companies) and other asset classes. In previous cases, the Commission has left open the question whether each of these services constitute a separate product market.¹⁶
27. The Commission has in the previous decisions considered that, with regard to retail banking services and corporate banking services to SME's the relevant geographic market is national at scope. The Commission has furthermore left open whether the market for corporate banking to LCCs is national or wider at scope. As for the financial market services, the Commission has considered that most of the market segments are international at scope.¹⁷
28. In the present decision all the market definitions can be left open as the transaction does not lead to competition concerns under any alternative market definition.

VI. COMPETITIVE ASSESSMENT

29. The transaction does not give rise to any vertical or horizontal overlaps between Investments BV and LeasePlan Corporation.
30. Volkswagen and LeasePlan have overlapping activities in certain countries in full fleet leasing and management services, finance lease for vehicles, short term car rental and insurance brokerage. In addition, Volkswagen is active in the manufacturing and distribution of cars, which can be considered as a vertically related market to the full fleet leasing and management services, short term car rental and insurance brokerage.
31. These *existing* overlaps give rise to several horizontally and vertically affected markets in a significant number of EEA Member States in respect of several product markets. However, these existing overlaps have been found not to raise competition concerns in previous Commission decisions: M.3090 *Volkswagen/Offset/Crescent/LeasePlan/JV* and M.5250 *Porsche/Volkswagen*¹⁸ and the current operation does not change anything in relation to the existing overlaps.

¹⁵ See: *Ibid.*

¹⁶ See: *Ibid.*

¹⁷ See: case M. 5384 *BNP Paribas/Fortis*.

¹⁸ The only overlap which has not been addressed in M. 3090 decision was the *de minimis* overlap in the insurance brokerage, however both Parties do not have market shares exceeding 5% on any relevant

32. Neither Investments BV nor any other companies in the Metzler Group are active in any markets in which LeasePlan is active or in a vertically related market to LeasePlan's activities.
33. The transaction therefore does not give rise to any new relevant overlaps in the Parties' activities.
34. The only new (minor) overlaps which the Parties identified as a result of the transaction are not relevant as they are minor horizontal overlaps between the Parents' activities that are unrelated to the joint venture's activities. However, they do not lead to any risk of coordination of the Parents' activities.
35. The Metzler Group¹⁹ and Volkswagen are active in financial services. However, the two parents have a different focus. Volkswagen offers corporate and retail banking services in Germany while the Metzler Group focuses on investment banking, asset management, financial market services and private banking in Germany and Ireland. The minor overlap between the parents' activities is not relevant for the assessment of the proposed transaction. In any event, the parties submit that the parents' combined market share on any possible relevant market in this sector would be well below 15%. On the other hand, none of the financial service activities of the Metzler Group could be considered as being upstream to LeasePlan's activities.
36. To conclude, the proposed transaction does not give rise to any horizontally or vertically affected markets nor does it appear to result in a significant impediment to effective competition.

VII. CONCLUSION

37. 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)
Algirdas Semeta
Member of the Commission

national market (or segment thereof, particularly in motor vehicle insurance brokerage) with the exception of Austria and Czech Republic, where the combined market share is between 5-10%.

¹⁹ Metzler Group is controlling Investments BV.