

***Case No COMP/M.6333 -
BMW/ ING CAR LEASE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/09/2011

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Brussels, 23.09.2011

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PUBLIC VERSION

MERGER PROCEDURE

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6333 - BMW/ ING Car Lease
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 22 August 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Bayerische Motoren Werke AG ("BMW", Germany) acquires within the meaning of Article 3 (1)(b) of the Council Regulation control of the whole of ING Car Lease by way of purchase of shares from ING Car Lease's parent company ING Groep N.V. ("ING Group", Netherlands)² (BMW and ING Car Lease are hereinafter referred to collectively as "the Parties").

I. THE PARTIES AND THE OPERATION

2. BMW is primarily a worldwide automobile and motorcycle manufacturer. Besides developing, producing and marketing these vehicles, it also provides financial services for private and business customers. BMW provides operational leasing services with fleet management, "stand-alone" fleet management and financial leasing, mainly under its "Alphabet" brand. Alphabet operates local and international fleets, which consists of over 300 000 multi-brand vehicles worldwide. In Europe, it provides leasing activities in Austria,

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 257, 1.9.2011, p. 8.

Belgium, Denmark, France, Italy, Germany, the Netherlands, Norway, Spain, and the United Kingdom³.

3. ING Car Lease is active in the car leasing and fleet management business. Its primary focus is multi-branding operational leases, but it has also some more limited activities regarding "stand-alone" fleet management, short term rentals and financial leases. In Europe, ING Car Lease operates directly in the following countries: Belgium, France, Italy, Luxembourg, the Netherlands, Poland, Spain and the United Kingdom.
4. Pursuant to a Sale and Purchase Agreement dated 8 July 2011 by and among BMW and ING Group, BMW has agreed to purchase the car leasing and fleet management business of ING Group. The completion of the transaction is subject to a number of conditions, which the Parties intend to complete before 31 December 2011.
5. On completion of the proposed transaction, BMW will hold 100 per cent of the issued share capital of all those companies which constitute ING Group's car leasing and fleet management business and which are currently directly or indirectly held by ING Group.
6. Hence, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. EU DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (BMW: EUR 60 477 million; ING Car Lease: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (BMW: EUR [...] million; ING Car Lease: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

³ BMW also has some limited activities in short term rental by way of annual sales of EUR [...] in Germany by Fleetlevel+ Services GmbH and its new car sharing joint venture with Sixt in certain cities in Germany and the United Kingdom which was notified and approved by the Commission earlier this year (see Commission decision of 31 May 2011 in COMP/M.6148 - *BMW/SIXT/DriveNow JV*).

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

III. RELEVANT MARKETS

8. The activities of BMW and ING Car lease overlap in the following product segments: operational leasing, full fleet leasing and management services, "stand-alone" fleet management, short term rental and financial leasing. Furthermore, there exists a vertical link given that BMW as a car manufacturer and supplier is upstream to ING Car Lease's leasing business.

Product Markets

A. Operational leasing, full fleet leasing and management services, and "stand-alone" fleet management

9. Undertakings active on this segment offer a combination of operational leasing and fleet management services. With operational leasing, the economic and legal ownership of the car remains with the lessor. Hence, it is the lessor who has to bear all the risks attached to the property (e.g. maintenance, changes to the value of the car and its disposal at the end of the contract). The client can use the car during the term of the lease under the conditions agreed with the lessor. Fleet management 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, services during the life-time of the vehicle like administration, registration, maintenance, tyres, fuel and oil etc. thus enabling the client company to monitor the fleet and help control costs by identifying issues at an early stage.
10. In previous cases the Commission has identified a separate product market for full fleet leasing and management services for passenger cars and light commercial vehicles (which comprises operational leasing and related fleet management services)⁵. However, the Commission left open whether the market for full fleet leasing can be subdivided into funded and unfunded leasing (i.e. between fleet management services with and without funding/leasing services).⁶ Furthermore, in some - but not all decisions⁷ - the Commission has also indicated that a distinction may be made between full fleet leasing and management services concerning vehicles of up to 3.5 t (passenger cars and light commercial vehicles) and vehicles of more than 3.5 t (trucks and buses) as customers of leasing services for buses and trucks have demands that differ from those of other leasing customers.

⁵ See, for example: Case COMP/M.5568 - *Volkswagen/Fleet Investments/LeasePlan Corporation JV* - 19 August 2009; Case COMP/M.4199 - *De Lage Landen/Athlon* - 12 June 2006; Case COMP/M.3969 - *Societe Generale/Ford Lease-Business Partner* - 22 November 2005; and Case COMP/M.3090 - *Volkswagen/Offset/Crescent/LeasePlan/JV* - 29 June 2004

⁶ Case COMP/M.5250 - *Porsche/Volkswagen* - 23 July 2008; Case COMP/M.3090 - *Volkswagen/Offset/Crescent/LeasePlan/JV*; COMP/M.4199 - *De Lage Landen/Athlon*.

⁷ For instance, whereas the Commission referred to this distinction in Case COMP/M.4199 - *De Lage Landen/Athlon*, it did not do so in its more recent decision in Case COMP/M.5568 - *Volkswagen/Fleet Investments/LeasePlan Corporation JV*.

11. The Parties did not express objections to segmenting the market between operational leasing (including where offered with fleet management) - which represents the possible product market for “funded (operational) leasing” - and fleet management services provided on a “stand-alone” basis - which represents the possible product market for “unfunded leasing”. They also did not contest that a segmentation could be made between full fleet leasing and management services concerning vehicles of up to 3.5 t (passenger cars and light commercial vehicles) and vehicles of more than 3.5 t. The Parties submit however that it would not be appropriate to define a product market for full fleet leasing and management services segmented by type of cars (small cars; medium cars; large cars; executive cars; sports cars etc), since they consider the competitive dynamics in car leasing between the various operators to occur overall for all car types, rather than according to each type of car⁸.
12. The majority of the respondents to the market investigation⁹ agreed that full fleet leasing and financial leasing should be distinguished on the basis of the services provided. Many respondents also considered that a distinction should be made between the market for full fleet leasing and management services for vehicles of up to 3.5 t and vehicles of more than 3.5 t because of differences in the regulation, maintenance and customers type. Finally, while considering that most of the companies offer funded and unfunded leasing, respondents recognized that customers might perceive a difference when choosing one of these options, most notably because of the risk taken by the lessor in operational leasing¹⁰. The market investigation also provided indications that there should not be any segmentation by type or brand of cars, as leasing companies offer a range of types and brands with identical services while most customers wish and order various types and brands¹¹.
13. In any event, the precise market definition with regard to full fleet leasing and management services can be left open for the purposes of this case as the assessment of the transaction would not change whichever product market definition is retained.

B. Financial leasing

14. In the case of financial leasing the lessee only has the obligation to pay all the lease instalments to meet the financing costs. By contrast with operational leasing, on payment of the final instalment, legal ownership of the car transfers to the client, the lessor's obligations do not include any service elements and the operational risk and the residual risk are borne

⁸ The Parties state that leasing providers will usually not be chosen according to the type of car, but that many customers will use one single leasing provider for their entire fleet. In the Parties' opinion this reflects the demands of customers, which generally require an individually composed fleet, made up of different types of vehicles.

⁹ Replies to the Commission's request for information to car leasing competitors in the Netherlands of 24 August 2011; replies to the Commission's request for information to car leasing customers of 24 August 2011.

¹⁰ Replies to the Commission's request for information to car leasing competitors in the Netherlands of 24 August 2011; replies to the Commission's request for information to car leasing customers of 24 August 2011.

¹¹ Replies to the Commission's request for information to car leasing competitors in the Netherlands of 24 August 2011; replies to the Commission's request for information to car leasing customers of 24 August 2011.

by the lessee. The financing may be achieved 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 party by the lessor.

15. In a previous decision¹², the Commission considered that vehicle finance leasing and full fleet car leasing and management can constitute distinct markets as the leasing agreements for financial leases are concluded with the main purpose of financing the vehicles.¹³ As noted above in the preceding section, respondents to the market investigation agreed with this distinction¹⁴.
16. In any event, the precise market definition with regard to financial leasing can be left open for the purposes of this decision as given the relatively limited position¹⁵ of the Parties in this area the assessment of the transaction would not change whichever product market definition is retained.

C. Short term rental

17. In a previous decision¹⁶, the Commission has defined "short term car rental" as the 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). Whereas in some cases the Commission has distinguished separate markets for corporate short term rental and leisure car rental¹⁷, in others it has left this open¹⁸.
18. The Parties consider that car sharing forms part of short term rental and have confirmed that irrespective of the product market definition this would not be an affected market. The Parties submit that members of car sharing clubs typically need - or consider it desirable - to have access to a car for a short period of time (e.g. for a few hours or a day) from time to time. Car sharing is therefore similar to short term rental in that the customer uses a particular car for a very limited period of time. This is in complete contrast to car leasing where the leased vehicle is not made available for a short period.
19. In any event, the precise market definition with regard to short term rental can be left open for the purposes of this decision as this would not significantly alter the assessment of the transaction.

¹² Case COMP/M.4199 - *De Lage Landen/Athlon*.

¹³ Ibid.

¹⁴ Replies to the Commission's request for information to car leasing competitors in the Netherlands of 24 August 2011; replies to the Commission's request for information to car leasing customers of 24 August 2011.

¹⁵ The Parties have overlapping activities in financial leasing in the UK and in the Netherlands where their combined market shares do not exceed [5-10]% with a maximum increment of [0-5]%. On an EU market, the Parties' combined market shares would reach [0-5]%.

¹⁶ Case COMP/M.3090 - *Volkswagen/Offset/Crescent/LeasePlan/JV*.

¹⁷ See for example: Case COMP/M.2510 - *Cendant/Galileo* - 24 September 2001.

¹⁸ See for example: Case COMP/M.3090 - *Volkswagen/Offset/Crescent/LeasePlan/JV*.

Geographic Market

20. In previous decisions, the Commission has considered the markets for full fleet leasing and management services, financial leases for vehicles and short term car rental to be national.¹⁹ The Commission notably based its conclusion on national differences in tax and duty regimes, road conditions and differing needs and preferences of the customers. Furthermore it found that there was at that time no standardisation of products at European level and that the national markets differed considerably in terms of market size and maturity²⁰.
21. As the notifying party does not have a strong view on the geographic definition of the respective product market, it has provided data for every country in which BMW's and ING Car Lease's activities overlap.
22. The market investigation conducted in the current case revealed that tenders for the provision of car leasing services across several Member states are increasing. However factors such as taxes, legislation, VAT rates, and customer preferences still strongly indicate that the markets are national in scope²¹.
23. For the purposes of the present decision, however, the precise scope of the geographic market can be left open as the proposed transaction does not raise concerns whether the markets are considered to be national or EEA wide.

Vertical link: *Supply of new cars*

24. BMW is inter alia a manufacturer and supplier of passenger vehicles. It is therefore active on a market which is upstream of the provision of car leasing/fleet management services.
25. In previous Commission decisions, the Commission has considered, whilst ultimately leaving the issue open, whether all new cars form part of the same relevant product market or if a further segmentation should be made according to certain categories of car²².
26. The Parties consider that it is not appropriate to define the market relating to different types of cars, since in their opinion, on the demand-side there will be a chain of substitution between vehicles in different categories. To underline this argument they claim, for example, that large cars, executive cars and luxury cars are likely to be close substitutes, at least to such an extent as to constrain a hypothetical monopolist in any one segment from profitably raising its prices, and therefore large cars and luxury cars are clearly close

¹⁹ Case COMP/M.5568 - *Volkswagen/Fleet Investments/LeasePlan Corporation JV*; Case COMP/M.4199 - *De Lage Landen/Athlon*; Case COMP/M.3090 - *Volkswagen/Offset/Crescent/LeasePlan/JV*.

²⁰ Case COMP/M.3090 - *Volkswagen/Offset/Crescent/LeasePlan/JV*.

²¹ Replies to the Commission's request for information to car leasing competitors in the Netherlands of 24 August 2011; replies to the Commission's request for information to car leasing customers of 24 August 2011.

²² See Case COMP/M.5518 - *Fiat/Chrysler* - 24 July 2009; Case COMP/M.5250 *Porsche/Volkswagen*; and Case COMP/M.3090 - *Volkswagen/Offset/Crescent/LeasePlan/JV*. According to these previous decisions the relevant product market regarding the manufacture and supply of new cars could be (a) all new cars; but (b) could also be segmented into the following product markets: (i) mini cars; (ii) small cars; (iii) medium cars; (iv) large cars; (v) executive cars; (vi) luxury cars; (vii) sports cars; (viii) multi-purpose cars; and (ix) sport utility vehicles (including off-road vehicles).

competitive constraints regarding executive cars. Moreover they argue, that from the supply-side, many manufacturers – including BMW – are active in multiple product segments (e.g. BMW offers various cars within its 1, 3, 5, 6, 7, X and M series, as well as various models under its Rolls Royce and Mini brands), and can easily switch production between these segments.

27. However, the precise market definition with regard to the supply of new cars can be left open for the purposes of this case given that the assessment of the transaction would not change whichever product market definition is retained.
28. Concerning the geographic scope, the Commission has left open if the product markets for the manufacture and supply of new cars are European-wide or national. The market investigation conducted in this case generally indicated that even though a particular model of car may be distributed throughout the EEA, important variations still exist between Member States relating to customer preferences (brand, size, fuel, and options), CO₂ requirements and tax regimes. For the purposes of the present decision, however, the definition of the geographic market can be left open as the proposed transaction does not raise concerns even on the basis of national markets.

IV. COMPETITIVE ASSESSMENT

29. Whatever the product market definition retained for full fleet leasing and management services, the concentration will lead to horizontally affected markets only in the Netherlands²³. There are also a number of vertical relationships arising from the notified concentration given BMW's upstream activities as a car manufacturer.

Horizontal overlaps in full fleet leasing and management services and operational leasing²⁴

30. Either on the basis of a national market for full fleet leasing and management services or on a narrower market for operational leasing, the Parties' activities would overlap in six Member States (Belgium, France, Italy, the Netherlands, Spain and the United Kingdom). However, the transaction will only give rise to affected markets in the Netherlands, where post-transaction the Parties will account for a combined market

²³ The Parties' activities overlap in other markets, which however will not be affected by the transaction due to the low increment and combined market shares which will result from the concentration. In the case of stand-alone fleet management: an overlap would occur in the United Kingdom (combined market share of [0-5]% by volume and [0-5]% by value). Concerning financial leasing: an overlap would occur in the United Kingdom (combined market share of [5-10]% by volume and [5-10]% by value). Regarding short term rentals BMW only has very limited activities. These are confined to Germany where BMW generated annual turnover of only EUR [...] from short term car rentals. BMW has also recently created a new car sharing joint venture with Sixt in certain cities in Germany and the UK. In contrast, ING Car Lease offers short term rentals in the Netherlands, Belgium, France, Poland and the UK, but this activity is primarily ancillary to its core operational leasing and fleet management activities - e.g. where a client is awaiting the delivery of a new operational lease vehicle, or has a temporary need for extra vehicles. In the UK, the only country where overlaps could occur on a broad market definition (short term car rental and car sharing), the position of ING is very small with [...] car rentals in 2010.

²⁴ If the full fleet leasing and management services market and its potential sub-markets was segmented between vehicles up to 3.5t (passenger cars and light commercial vehicles) and vehicles over 3.5t (trucks and buses), the competitive assessment would not be different. Indeed, BMW and ING only have insignificant leasing activities with regards to vehicles over 3.5t. Consequently, the Parties submit that they would not have a combined share of 15% or more in any such segments.

share of around [10-20]% by value ([10-20]% by volume²⁵) in full fleet leasing and management services and between [10-20]%²⁶ by value (between [10-20]% by volume) in operational leasing.

31. The merged entity's market share in the Netherlands remains relatively low and the increment arising from the transaction is limited at less than [0-5]%. In addition, post transaction, a range of other strong credible and active car leasing competitors in the Dutch market would still constrain the merged entity such as Athlon (with a market share of [10-20]% in volume in 2010), LeasePlan ([10-20]%) as well as a number of other competitors including Arval ([0-5]%), ALD Automotive ([0-5]%), Terberg ([0-5]%) and Business Lease ([0-5]%).
32. The market investigation in the present case has shown that a majority of the Parties' customers in the Netherlands organise competitive tenders for the procurement of car leasing services. The average length of the supply contract with leasing companies is typically 4 years. Furthermore, most of these customers currently multi-source, using two or three leasing companies at the same time²⁷. Therefore, the majority of these customers argue they would switch supplier if the merging entity were to raise its price by 5-10% after the transaction.
33. In the light of the factors mentioned above and in the absence of concerns on the part of customers, it is concluded that the proposed transaction does not raise serious doubts as regards the market(s) for full fleet leasing and management services and a narrower market for operational leasing.

²⁵ Source for market shares in the Netherlands in volume in 2010: (a) for market size, VNA (Vereniging van Nederlandse Autoleasemaatschappijen - the Association of Netherlands Vehicle Leasing Companies); and (b) for the parties' volumes, BMW and ING Car Lease internal data.

²⁶ For operational leasing in the Netherlands, the parties' combined market share in 2010 depends on the appropriate figure for market size: (a) using a market size figure published by Datamonitor of 442 242 vehicles, the parties would have a combined share of [10-20]% by volume ([10-20]% by value) in 2010; but (b) data published by VNA indicate that the size of the market is at least 552 242 vehicles - which would mean that the parties' combined share would be only [10-20]% by value and volume in 2010.

²⁷ Replies to the Commission's request for information to car leasing customers of 24 August 2011.

Vertical link between supply of new cars and full fleet leasing and management services

34. According to the notifying party, if all car types were considered to form part of the same product market, BMW's market share for the supply of new cars (by volume) would be below 10% whether the geographic scope of the market is EEA-wide or national. If the market for the manufacture and supply of new cars is segmented according to different classes of cars, however, BMW's market share for the supply of new executive cars by volume would exceed 25% in four countries, in which ING Car Lease has vehicle leasing/fleet management activities: Belgium, Italy, the Netherlands and Poland.
35. Table 1 below gives an overview of BMW's market shares for the supply of new executive cars in these countries for 2008, 2009 and 2010.

Table 1: Supply of new executive cars

Supply of new executive cars	2008			2009			2010			
	Country	Market size (volume of vehicles)	BMW volume (vehicles)	BMW share	Market size (volume of vehicles)	BMW volume (vehicles)	BMW share	Market size (volume of vehicles)	BMW volume (vehicles)	BMW share
	Belgium	21,230	[...]	[20-30]%	16,777	[...]	[20-30]%	20,610	[...]	[20-30]%
	Italy	35,698	[...]	[10-20]%	25,024	[...]	[10-20]%	25,483	[...]	[20-30]%
	Netherlands	16,358	[...]	[10-20]%	12,246	[...]	[10-20]%	13,436	[...]	[20-30]%
	Poland	4,400	[...]	[20-30]%	3970	[...]	[20-30]%	4,319	[...]	[20-30]%

Source: BMW internal data

36. The table reveals that, with the exception of Belgium, BMW's market shares exceed 25 % only since 2010²⁸.

Input foreclosure

37. The Parties put forward that BMW's car business upstream of the car leasing markets in which ING Car Lease operates will not raise any competition concerns, since upstream BMW has no market power in the supply of cars and therefore no ability to give effect to input foreclosure.
38. Indeed, BMW will face competitive constraints from active and strong competitors on the executive cars segment. BMW's main competitors and their market shares by volume in 2010 are: (a) in Belgium, Mercedes ([30-40%]), Audi ([10-20%]), Volvo ([10-20%]); (b) in Italy, Mercedes ([30-40%]), Audi ([10-20%]), Volvo ([5-10%]); (c) in the Netherlands, Volvo ([20-30%]); Mercedes ([10-20%]); Audi ([10-20%]) and (d) in Poland, Mercedes ([20-30%]); Audi ([10-20%]); Volvo ([10-20%]).

²⁸ With regard to the significant growth of market shares of BMW in the Netherlands and Italy, the Parties note it has to be understood as a temporary increase which resulted from the introduction of BMW's all new 5 series in 2010. They argue that it is generally the case that a car manufacturer's market shares will jump up in the first two years following the introduction of a new model. It is expected that BMW's market shares for the supply of new executive cars will be smaller in 2011 and subsequent years.

39. In this case, the market investigation also revealed that a majority of the Parties' competitors in car leasing do not lease enough BMWs to include it in their seven main brands leased²⁹. In addition, a majority of car leasing companies³⁰ does not consider it likely that BMW would cease supplying them after the proposed transaction as leasing companies are important customers for car manufacturers.

Customer foreclosure

40. The Parties also put forward that on the downstream market there would be no realistic risk of the merged car leasing business engaging in customer foreclosure, to the detriment of BMW's competitors on the upstream market for the manufacture and supply of new cars.

41. First, given the merged entity's relatively modest market shares in car leasing, competing car suppliers will continue to have a sufficient number of alternative outlets for their products.

42. Second, the merged entity would have no incentive to discriminate against rival car suppliers, as (in order to stay competitive with rival car leasing companies) it will need to offer customers a wide range of cars at competitive prices. For instance, at the moment, BMW already leases between [...] and [...] of cars (depending on the Member State) which do not belong to the BMW Group (BMW, Mini or Rolls-Royce).

43. Although a number of car manufacturers³¹ that replied to the Commission's market investigation fear that ING will decrease purchase volumes for their brands, a majority of car leasing customers³² indicate that the second and third most important criteria when selecting a car leasing company (behind the most cost effective solution) are (i) the offer of multiple car brands (ii) the offer of different car categories. It was also confirmed by Parties' competitors on the downstream market that multiple car choice is an important element in being able to compete in the car leasing business³³.

44. In the light of the factors explained above, it is concluded that the proposed transaction does not raise serious doubts as regards vertical effects, either through input or customer foreclosure.

²⁹ Whereas most of them place Audi, one of the closest BMW's competitors in executive cars, in this 'top 8 ranking.

³⁰ Replies to the Commission's request for information to car manufacturers of 24 August 2011.

³¹ Ibid.

³² Replies to the Commission's request for information to car leasing customers of 24 August 2011.

³³ Replies to the Commission's request for information to car leasing competitors of 24 August 2011.

V. CONCLUSION

45. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission
(signed)
Neelie KROES
Vice-President*