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***Case No COMP/M.6763 - VWFS/ PON HOLDINGS B.V./
PON EQUIPMENT RENTAL & LEASE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/03/2013

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EUROPEAN COMMISSION

Brussels, 27.3.2013
C(2013) 1933 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6763 - VWFS/ PON HOLDINGS B.V./ PON EQUIPMENT RENTAL & LEASE
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹**

- (1) On 25 February 2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Volkswagen Financial Services ('VWFS', Germany), belonging to Volkswagen Group ('VW Group', Germany), and PON Holdings BV ('PON', the Netherlands), through their jointly controlled undertaking Volkswagen Pon Financial Services BV ('VWPFS', the Netherlands), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Pon Equipment Rental & Lease BV ('PERL', the Netherlands) by way of purchase of shares². VWFS and PON are designated hereinafter as the "Parties".

1. THE PARTIES

- (2) VWFS is a wholly-owned subsidiary of Volkswagen AG, the parent company of VW Group. VW Group, a publicly traded company with its headquarters in Wolfsburg (Germany), is mainly engaged in the development, manufacture, sale and distribution of motor vehicles, including related spare parts and accessories, diesel engines and motorcycles. VWFS is responsible for coordinating the worldwide

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 64, 05.03.2013, p.12.

financial services activities of the VW Group and specializes in the provision of financial services mainly relating to the distribution and financing of passenger cars and light commercial vehicles of VW Group.

- (3) PON is an international trading, service and (in relation to bicycles only) manufacturing company. As such, PON is an importer and dealer of high-quality products supplied by various manufacturers, including Volkswagen, Caterpillar, Linde and Continental. PON operates via its' wholly or majority owned businesses and (minority) equity participations and employs approximately 11 000 people throughout various business locations in 21 countries.
- (4) VWPFS is a full-function joint venture, jointly controlled by VWFS and PON. Its creation was cleared by the Commission in 2003.³ VWPFS currently focuses on full fleet leasing and fleet management services of passenger cars and light commercial vehicles in the Netherlands. It offers both operational and financial leasing as well as a number of ancillary services.
- (5) PERL, a Dutch wholly-owned subsidiary of PON, is predominantly focused on leasing and finance solutions for brands imported and distributed by subsidiaries of PON (namely MAN-branded trucks and buses as well as equipment and products of the Motrac-Linde and Caterpillar brands).

2. THE OPERATION

Changes in the activities of the joint venture

- (6) The proposed transaction concerns the indirect acquisition of PERL by VWFS and PON, through their jointly controlled undertaking VWPFS. VWPFS intends to acquire all the share capital of PERL, which is currently owned by PON, as set out in the Share and Asset Purchase Agreement.
- (7) Pursuant to paragraph 107 of the Commission Consolidated Jurisdictional Notice ("CJN"), a concentration may arise where the joint venture's parent companies transfer significant additional assets, know-how or other rights to the joint venture, where these assets or rights constitute an expansion of the scope of the joint venture beyond the activities which were the object of the original joint venture, and if the joint venture performs such activities on a full-function basis.⁴
- (8) The transfer of PERL can be considered as the transfer of significant additional assets and contracts which extends the activities of the original joint venture VWPFS and which shows that the parents are the real players behind the transaction.
- (9) Following the proposed transaction VWPFS will acquire PON's trucks and buses leasing activities in the Netherlands. Prior to the closing the transaction, PERL will divest all activities which do not relate to providing finance solutions for trucks and buses. Following this divestment PERL's activities are confined to leasing of trucks and buses of the MAN brand, which produces heavy and medium duty trucks (that is

³ Case n° COMP/M.3246 – VW / PON / PON Financial Services, 15 October 2003.

⁴ 2008/C 95/01, Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

to say more than 5 tonnes) and buses. Additionally, the completion of the transaction is subject to a number of conditions, which the Parties intend to complete before 30 June 2013.⁵

Full functionality

- (10) VWPFS is a full-function joint venture established in 2003.⁶ VWPFS has activities beyond one specific function for the parents and has its own presence on the market as neither VWFS nor PON offer full-fleet leasing and management services, nor leasing of trucks and buses services. VWPFS has its own management dedicated to its day-to-day operations⁷ and has access to sufficient resources for funding its business on a stand-alone basis through the capital markets.⁸ VWPFS has been continuously operating since 2003 and the Shareholders' Agreement anticipates duration of the agreement to be at a minimum until 16 July 2023.⁹ The integration of PERL into VWPFS will not change this situation.
- (11) Therefore, VWPFS is intended to perform on a lasting basis all the functions of an autonomous economic entity in accordance with the CJN.

Undertakings concerned

- (12) Although the acquirer VWPFS is already a full-function joint venture, the undertakings concerned by the concentration are VWFS and PON as well as the target PERL. The contemplated transaction constitutes an extension of an existing joint venture's activities through the transfer of an existing business (PERL) from one of the parent companies (PON) to the joint venture (VWPFS). PERL with a turnover of EUR [...] represents [10-20]% of the current turnover of the joint venture VWPFS. This significant involvement which extends considerably the product range of VWPFS demonstrates that the parent companies themselves play an important role in the initiation, organisation and financing of the operation and that therefore the parent companies are in fact the real players behind the operation. Pursuant to paragraph 147 *in fine* of the CJN, in those cases, the parent companies are regarded as undertakings concerned.¹⁰
- (13) The notified operation therefore constitutes a concentration within the meaning of Article 3(1) (b) and Article 3 (4) of the EU Merger Regulation.

3. UNION DIMENSION

- (14) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹¹ (VWFS¹²: EUR 159 337 million; PON: EUR [...]);

⁵ Clause 2.2 of the Share and Asset Purchase Agreement.

⁶ Case n° COMP/M.3246 – VW / PON / PON *Financial Services*.

⁷ Undertaken by the Management Board, as set out in Clause 4 of the Shareholders' Agreement.

⁸ Clause 3.6 of the Shareholders' Agreement.

⁹ Clause 18.1 of the Shareholders' Agreement.

¹⁰ 2008/C 95/01, Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

¹¹ Turnover calculated in accordance with Article 5 of the Merger Regulation.

PERL EUR [...]). Each of them has a Union-wide turnover in excess of EUR 250 million (VWFS: EUR [...], PON: EUR [...]; PERL: EUR [...]). VWFS does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

- (15) The activities of the Parties overlap in (i) the operational leasing of trucks and buses in the Netherlands, (ii) the financial leasing of trucks and buses in the Netherlands as well as (iii) the sale of used trucks and buses in the Netherlands. Furthermore, since the Parties are both active in the distribution of trucks and buses in the Netherlands and PERL acquires trucks and buses for its leasing activities, there is a vertical relationship between the Parties' and PERL's activities.

4.1. Horizontally Affected Markets

4.1.1. *The Operational Leasing of Trucks and Buses*

- (16) Operational leasing and financial leasing can be distinguished on the basis of their respective business models and offerings to consumers, particularly in relation to the ownership status of the good and the risks associated with the leasing¹³.
- (17) In an operational lease, the risks of ownership are retained by the lessor, while the lease duration does not cover any major part of the asset's life¹⁴. Also, ownership is not transferred to the lessee at the end of the lease term and the lease contract does not contain a bargain purchase option¹⁵. The costs of other related services – such as maintenance and repair services – are usually included in the lease payments¹⁶.
- (18) There are also a number of previous Commission's decisions relating to operational leasing services on specific types of assets, for example rail rolling stock or trucks.¹⁷ Accordingly, the Parties claim that a further distinction could be made between operational leasing services for vehicles of up to 3.5 tonnes (such as passenger cars and light commercial vehicles) and vehicles of more than 3.5 tonnes (trucks and

¹² The aggregated turnover of VWFS as the undertaking concerned was calculated in accordance with Article 5 of the Merger Regulation and, thus, takes into consideration the turnover of VW Group.

¹³ Case n° COMP/M.6436 – *Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV*, 20 December 2011, recital 15; case n° COMP/M.5217 – *GEFA / PEMA*, 6 August 2008, recital 7.

¹⁴ Case n° COMP/M.6436 – *Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV*, 20 December 2011, recital 16; case n° COMP/M.6333 – *BMW / ING Car Lease*, 23 September 2011, recital 9; case n° COMP/M.5217 – *GEFA / PEMA*, 6 August 2008, recital 8.

¹⁵ Case n° COMP/M.6436 – *Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV*, 20 December 2011, recital 16; case n° COMP/M.5217 – *GEFA / PEMA*, 6 August 2008, recital 8.

¹⁶ Case n° COMP/M.6436 – *Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV*, 20 December 2011, recital 16; case n° COMP/M.5217 – *GEFA / PEMA*, 6 August 2008, recital 8.

¹⁷ See for instance case n° COMP/M.669 – *Charterhouse / Porterbrook*, 11 December 1995; case n° COMP/M.5217 – *GEFA / PEMA*, 6 August 2008.

buses).¹⁸ Furthermore, the Parties provided data for an even narrower segmentation (separate product markets for trucks and buses of more than 3.5 tonnes respectively).

- (19) In any event, the precise product market definition with regard to operational leasing can be left open as the transaction does not raise competition concerns under any plausible market definition.
- (20) In previous decisions the Commission has considered the market for operational leasing to be national in scope due to the different tax and duty regimes as well as different road conditions which lead to different needs and customer preferences¹⁹. In the present case, it can be left open, whether the market is national or wider, as the transaction will not lead to competition concerns even on the basis of national markets.

4.1.2. *The Financial Leasing of Trucks and Buses*

- (21) In previous decisions the Commission has distinguished financial leasing from other types of leasing²⁰. Financial leasing primarily functions as a loan by the lessor to enable the lessee to purchase a given asset. In contrast to operational leases, 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 lessor²¹. At the end of the lease period the lessee usually has the option to acquire ownership of the asset²².
- (22) The Parties submit that this market may also include other types of financing solutions such as instalment purchase and regular loans. However, in previous cases, the Commission found indications towards a segmentation of the relevant product market according to the type of the financial solutions actually provided (leasing vs. other types of financials products such as various kinds of loan arrangements)²³. Thus, the Parties also provided data for a narrower segmentation of separate product markets for the financial leasing of trucks and buses of more than 3.5 tonnes respectively.
- (23) Since the present concentration does not raise any competition concerns under any plausible market definition, the exact product market definition can be left open.

¹⁸ This distinction has been made in the context of fleet leasing services for vehicles. See for instance: case n° COMP/M.6333 – *BMW / ING Car Lease*, 23 September 2011, recital 12; case n° COMP/M.4199 – *De Lage Landen / Athlon*, 12 June 2006, recital 17; case n° COMP/M.2540 – *FIDIS / SEI / JV*, 4 September 2001, recitals 8-12.

¹⁹ Case n° COMP/M.6436 – *Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV*, 20 December 2011, recital 17; case n° COMP/M.5217 – *GEFA / PEMA*, 6 August 2008, recital 12.

²⁰ Case n° COMP/M.6436 – *Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV*, 20 December 2011, recital 26; case n° COMP/M.4199 – *De Lage Landen / Athlon*, 12 June 2006, recital 8.

²¹ Case n° COMP/M.6436 – *Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV*, 20 December 2011, recital 25; case n° COMP/M.5217 – *GEFA / PEMA*, 6 August 2008, recital 10.

²² Case n° COMP/M.6436 – *Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV*, 20 December 2011, recital 25; case n° COMP/M.5217 – *GEFA / PEMA*, 6 August 2008, recital 8.

²³ Case n° COMP/M.5217 – *GEFA / PEMA*, 6 August 2008, recital 11.

- (24) In previous decisions the Commission has considered the market for financial leasing to be at least national in scope²⁴. For the purpose of the present case, it can be left open, whether the market is national or wider, as the transaction will not lead to competition concerns even on the basis of national markets.

4.1.3. *The Sale of Used Trucks and Buses*

- (25) PON, through its subsidiary MAN Truck & Bus B.V., and VW Group, through Scania, are both active in the sale of used trucks and buses over 3.5 tonnes in the Netherlands.
- (26) The sale of used trucks and buses might need to be distinguished from the sale of new trucks and buses since the characteristics of the products as well as the market participants differ. Also, the parties submit that, when buying used trucks and buses customers typically are not interested in purchasing a fleet and/or maintenance contracts and financing²⁵.
- (27) However, the precise product market definition can be left open, since on the basis of all alternative definitions considered the concentration does not raise competition concerns. Similarly, it can be left open whether the relevant geographic market is national or wider, since even on the narrowest basis of national markets the concentration would not raise any competition concern.

4.2. **Vertically Affected Markets**

- (28) Both PON and VW Group are active in the distribution of trucks and buses in the Netherlands. VW Group manufactures Scania and MAN-branded trucks and buses and distributes them *via* a network of authorised dealers. PON, through its subsidiary MAN Truck & Bus B.V., is the exclusive importer of MAN-branded trucks and buses in the Netherlands and sells them at wholesale level to dealers, which subsequently will sell them at retail level. For its leasing activities, PERL acquires trucks and buses from such dealers. Therefore, there is a vertical relationship between the distribution activities of the Parties and PERL's leasing activities.
- (29) Since the VW Group acquires joint control over PERL's downstream leasing activities for MAN branded trucks and buses, which is vertically linked to the distribution activities of its parents, the concentration creates a vertical relationship between distribution and leasing in the Netherlands. More precisely, the concentration gives rise to vertically affected markets, since the market share for operational leasing exceeds 25%. However, the Commission recently examined in depth VW Group's market position in trucks and buses.²⁶ The proposed transaction does not bring about any change to the structure of the distribution market as PON and VW Group will continue to distribute their respective trucks and buses brands on the upstream level. Therefore, the exact product and geographic market definition for the distribution of trucks and buses in the Netherlands can be left open.

²⁴ Case n° COMP/M.6436 – *Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV*, 20 December 2011, recital 27.

²⁵ The Parties refer to the submissions made by Volvo in case n° COMP/M.1672 – *Volvo / Scania*, 14 March 2000, footnote 12.

²⁶ Case n° COMP/M.6267 – *Volkswagen / MAN*, 26 September 2011.

5. COMPETITIVE ASSESSMENT

- (30) The concentration leads to an overlap in the markets of operational and financial leasing²⁷ as well as the sale of used trucks and buses above 3.5 tonnes in the Netherlands. These overlaps lead to horizontally affected markets. There is also a vertical relationship arising from the notified concentration given the Parties' upstream activities related to the distribution of trucks and buses above 3.5 tonnes in the Netherlands.
- (31) As will be demonstrated below, the proposed concentration does not raise serious doubts in any of the affected markets. The competitive assessment focuses on the narrowest market definitions of operational and financial leasing of trucks and buses over 3.5 tonnes and the sale of used trucks and buses over 3.5 tonnes in the Netherlands, since PERL is only active in the Netherlands. Under a broader product and geographic market definitions, the transaction would not raise serious doubts either, as the Parties' market position and the ensuing overlap or vertical relationship, if any, would be less significant.

5.1. Horizontally Affected Markets

5.1.1. The Operational Leasing of Trucks and Buses

- (32) PON, through PERL, and VW Group, through Scania and LeasePlan, are both currently active in the operational leasing of trucks and buses over 3.5 tonnes in the Netherlands. The respective market shares are set out below in table 1.

Table 1: The Operational Leasing of Trucks and Buses over 3.5 tonnes in the Netherlands (2011) – Commission's market reconstruction

Company	Trucks	Buses	Trucks & Buses
VW Group	[10-20]%	[0-0]%	[10-20]%
PON (PERL)	[10-20]%	[0-5]%	[10-20]%
Combined	[20-30]%	[0-5]%	[20-30]%
Mercedes-Benz	[20-30]%	[0-5]%	[10-20]%
Volvo	[5-10]%	[0-5]%	[5-10]%
Renault	[0-5]%	[0-5]%	[0-5]%
PACCAR (DAF)	[5-10]%	[0-5]%	[5-10]%
Transned (Iveco)	[0-5]%	[0-5]%	[0-5]%
ING Lease	[5-10]%	[80-90]%	[10-20]%
ABN Amro Lease	[5-10]%	[0-5]%	[5-10]%
De Lage Landen	[10-20]%	[5-10]%	[10-20]%

Source: data collected from the Parties and their competitors in the course of the market investigation

- (33) Following the proposed transaction, the Parties' combined market share would be of [20-30]% in the overall operational leasing of trucks and buses in the Netherlands.

²⁷ In any given year, PON's best rough estimate would be that approximately [0-5]% of all its truck and bus leases would concern used vehicles. On this basis, the Parties submit that a distinction in leasing of new and used trucks and buses should not be made, as it would not substantially alter the competitive analysis provided in the Form CO. See e-mail from [...] of March 1, 2013.

- (34) On the basis of a further segmentation into trucks and buses, whilst the Parties' post-transaction market share will be of [20-30]% for trucks (PERL [10-20]%, VW Group [10-20]%), there will be no overlap between the Parties in the market for operational leasing of buses in the Netherlands (PERL [0-5]% and VW Group [0-0]%).
- (35) Moreover, there are many other strong competitors in the market for operational leasing of trucks and buses in the Netherlands such as ING Lease, ABN Amro Lease, De Lage Landen which are banks independent of vehicle manufacturers and offer leases for various brands (totalising a market share of approximately [30-40]%); as well as DAF [5-10]%, Volvo [5-10]% and Mercedes-Benz [10-20]% which are offering captive leasing for their own brands.
- (36) These market shares are not indicative of any market power of the merged entity. Furthermore, all competitors stated in response to the market investigation that the proposed concentration transaction will have no impact on the level of competition in the markets for operational leasing of trucks and buses over 3.5 tonnes in the Netherlands.²⁸
- (37) Therefore, the Commission concludes that given the rather low market shares of the merged entity, the strong presence of multi-brand leasing companies in the market as well as the absence of concerns on the part of competitors, the transaction does not raise serious doubts as to its compatibility with the internal market regarding the Dutch market for operational leasing of trucks and buses over 3.5 tonnes.

5.1.2. *The Financial Leasing of Trucks and Buses*

- (38) PON, through PERL, and VW Group, through VWFS, LeasePlan and Scania, are both currently active in the financial leasing of trucks and buses over 3.5 tonnes in the Netherlands. The respective market shares are set out below in table 2.

Table 2: The Financial Leasing of Trucks and Buses over 3.5 tonnes in the Netherlands (2011) – Commission's market reconstruction

Company	Trucks	Buses	Trucks & Buses
VW Group	[5-10]%	[10-20]%	[5-10]%
PON (PERL)	[5-10]%	[0-5]%	[0-5]%
Combined	[10-20]%	[10-20]%	[10-20]%
Mercedes-Benz	[0-5]%	[0-5]%	[0-5]%
Volvo	[5-10]%	[0-5]%	[5-10]%
Renault	[5-10]%	[0-5]%	[0-5]%
PACCAR (DAF)	[5-10]%	[0-5]%	[5-10]%
Transned (Iveco)	[0-5]%	[0-5]%	[0-5]%
ING Lease	[10-20]%	[20-30]%	[10-20]%
ABN Amro Lease	[20-30]%	[50-60]%	[20-30]%
De Lage Landen	[20-30]%	[5-10]%	[20-30]%

Source: data collected from the Parties and their competitors in the course of the market investigation

²⁸

See responses to questions 9 and 9.1 of Questionnaire to Competitors - Q1.

- (39) Following the proposed transaction, the Parties' combined market share would be of [10-20]% in the overall financial leasing of trucks and buses in the Netherlands, with an increment of only [0-5]% in market shares of the Parties.
- (40) On the basis of a further segmentation into trucks and buses, whilst the Parties' post-transaction market share will be of [10-20]% for trucks (PERL [5-10]%, VW Group [5-10]%), the increment brought by the transaction to the market share for buses of VW Group would be very small (PERL [0-5]%, VW Group [10-20]%).
- (41) The Parties will continue to face strong competition in the market for financial leasing of trucks and buses in the Netherlands, including from companies specialising in the leasing of trucks and buses such as ING Lease, ABN Amro Lease, and De Lage Landen which offer multi-branding leases (totalising a market share of approximately [60-70]%); as well as from strong competitors such as DAF [5-10]%, Volvo [5-10]%, which offer captive leasing services for their own brands.
- (42) These market shares are not indicative of any market power of the merged entity. Furthermore, all competitors stated in response to the market investigation that the proposed transaction will have no impact on the level of competition in the markets for financial leasing of trucks and buses over 3.5 tonnes in the Netherlands.²⁹
- (43) Therefore, the Commission concludes that given the rather low market shares of the merged entity, the strong presence of multi-brand leasing companies in the market as well as the absence of concerns on the part of competitors, the transaction does not raise serious doubts as to its compatibility with the internal market regarding the Dutch market for financial leasing of trucks and buses over 3.5 tonnes.

5.1.3. The Sale of Used Trucks and Buses

- (44) PON, through its subsidiary MAN Truck & Bus B.V., and VW Group, through Scania, are both active in the sale of used trucks and buses over 3.5 tonnes in the Netherlands. The respective market shares are set out in table 3.

Table 3: The Sale of Used Trucks and Buses over 3.5 tonnes in the Netherlands (2011) – Parties' estimates

The Sale of Used Trucks & Buses in the Netherlands - 2011
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²⁹ See responses to questions 9 and 9.2 of Questionnaire to Competitors - Q1.

	Number of used vehicles sold		VW Group (Scania-branded vehicles)			Pon (MAN-branded vehicles)			Combined market share	
	Total (end-user to end-user plus dealer to end-user)	Dealer to end-user only	Number of used vehicles sold	Market Share – Total (%)	Market Share – Dealer to end-user only (%)	Number of used vehicles sold	Market Share – Total (%)	Market Share – Dealer to end-user only (%)	Market Share – Total (%)	Market Share – Dealer to end-user only (%)
Trucks	13,711	5,661	[...]	[5-10]	[10-20]	[...]	[0-5]	[5-10]	[5-10]	[20-30]
Buses	723	245	[...]	[0-5]	[0-5]	[...]	[5-10]	[10-20]	[5-10]	[20-30]
Trucks & Buses	14,434	5,906	[...]	[5-10]	[10-20]	[...]	[0-5]	[5-10]	[5-10]	[20-30]

Source: based on the Parties' submission³⁰

- (45) Using a market size figure published by Rijksdienst wegverkeer of 5 906 of used vehicles sold³¹, the Parties' combined market share post transaction in the overall market for the sale of used trucks and buses over 3.5 tonnes in the Netherlands would be of approximately [20-30]%.
- (46) On the basis of a further segmentation into trucks and buses, the Parties' market share post-transaction would be of [20-30]% for trucks (PON [5-10] %, VW Group [10-20]%) and [20-30]% for buses (PON [10-20] %, VW Group [0-5]%).
- (47) These market shares are not indicative of any market power of the merged entity. Furthermore, all competitors stated in response to the market investigation that the proposed concentration transaction will have no impact on the level of competition in the markets for the sale of used trucks and buses over 3.5 tonnes in the Netherlands.³²
- (48) Therefore, the Commission concludes that the transaction does not raise serious doubts as to its compatibility with the internal market regarding the Dutch market for the sale of used trucks and buses over 3.5 tonnes.

5.2. Vertically Affected Markets

- (49) PON and the VW Group are both active in the distribution of trucks and buses in the Netherlands via a network of either owned dealerships or authorised dealers. PON is the exclusive importer and also a dealer of MAN-branded trucks and buses in the Netherlands. For its leasing activities, PERL acquires MAN trucks and buses from

³⁰ See e-mail from [...] of March 13, 2013.

³¹ The Rijksdienst wegverkeer registers data on (i) the transactions between end-users directly and (ii) the sales from a dealer to an end-user. The Parties submit that their respective provided figures relate to the sales from a dealer to an end-user, as they only have visibility on their own respective activities as dealers of used trucks and buses. See e-mail from [...] of March 13, 2013.

³² See responses to questions 9 and 9.3 of Questionnaire to Competitors - Q1.

such dealers. Therefore, there is a vertical relationship between the distribution activities of the Parties and the joint venture's leasing activities.

- (50) Following the proposed transaction, PON and the VW Group will continue selling trucks and buses and acting independently on the Dutch market for the distribution of trucks and buses. VW Group had market shares of [10-20]% for trucks and [30-40]% for buses in 2011; the figures for PON were [5-10]% and [10-20]% respectively. Although the market shares for buses are significant, the current competitive landscape is not expected to alter in any significant way, as the Parties will continue to compete and promote their respective trucks and buses separately, that is to say MAN in the case of PON and Scania in the case of VW Group.³³ At the level of distribution, competitive pressure will continue to be exercised by the players operating at the distribution level, including other well-known trucks and buses manufacturers such as Mercedes-Benz, Volvo/Renault and DAF.
- (51) All of these competitors have their own captive leasing arm. A risk of anticompetitive foreclosure is unlikely, given the strong competition of non-captive leasing firms which have a very substantial market share of the Dutch market for both operational and financial leasing. The three largest non-captive firms are subsidiaries of large Dutch banks. The market shares of non-captive leasing firms of more than 30% for operational and more than 50% for financial lease demonstrate that customers already today are willing and capable to seek alternatives to the offers of the manufacturers in-house leasing firms. This has been confirmed by the answers of non-captive leasing firms to the Commission's market investigation.³⁴
- (52) On the basis of the evidence collected through the market investigation, in particular the responses from non-captive leasing companies, the Commission has confirmed that no impact would be expected from the proposed transaction on other companies' activities and business strategy. Therefore, the Commission concludes that the present transaction does not raise serious doubts as regards vertical effects, either through input or customer foreclosure in the market for the distribution of trucks and buses in the Netherlands.

6. CONCLUSION

- (53) 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.

³³ Additionally, the Commission cleared the VW Group's acquisition of MAN in 2011. See case n° COMP/M.6267 – *Volkswagen / MAN*, 26 September 2011.

³⁴ See responses to questions 8, 8.1, 8.2 and 8.3 of Questionnaire to Competitors - Q1.

For the Commission

(signed)

Joaquín ALMUNIA

Vice-President