



EUROPEAN COMMISSION
DG Competition

Case M.10638 - ALD / LEASEPLAN

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval
Date: 15/05/2023



EUROPEAN COMMISSION

Brussels, 15.5.2023
C(2023) 3350 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

ALD S.A.
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92500 Rueil-Malmaison
France

Dear Sir or Madam,

Subject: Case M.10638 – ALD / LEASEPLAN

Approval of Crédit Agricole Consumer Finance as purchaser for the Divestment Businesses in Norway, Ireland, Czechia and Finland, and Crédit Agricole Consumer Finance together with Stellantis through their full function joint venture LeaseCo as purchasers for the Divestment Businesses in Luxembourg and Portugal, following your reasoned proposal of 23 March 2023, as amended, and the Trustee’s opinion of 28 April 2023

1. FACTS AND PROCEDURE

- (1) By decision of 25 November 2022 (the ‘Decision’) based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the ‘Merger Regulation’)¹ and Article 57 of the Agreement on the European Economic Area, the Commission declared the operation by which ALD S.A. (‘ALD’) acquires sole control of LP Group B.V. (‘LeasePlan’) compatible with the internal market and the EEA Agreement. The Decision is subject to conditions and obligations laid

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.

down in the commitments annexed to the Decision (the ‘Commitments’). ALD and LeasePlan are hereinafter collectively referred to as the ‘Parties’.

- (2) In particular, the Commitments provide that ALD commits to divest its operational leasing businesses in Norway, Ireland and Portugal and to procure the divestiture by LeasePlan of its operational leasing businesses in Luxembourg, Czechia and Finland, (all together the ‘Divestment Businesses’), in order to address the serious doubts raised in the operational leasing markets and maintain effective competition in these countries.
- (3) By Reasoned Proposal of 23 March 2023, ALD proposed for approval by the Commission (i) Crédit Agricole Consumer Finance (‘CACF’) (through its subsidiaries FCA Bank/Drivalia) as purchaser of Merrion Fleet Management Limited (‘ALD Ireland’), ALD Automotive AS (‘ALD Norway’), LeasePlan Česká CeskaRepublika s.r.o. (‘LP Czechia’) and LeasePlan Finland Oy (‘LP Finland’) and (ii) CACF and Stellantis N.V. (‘Stellantis’) (through their full function joint venture LeaseCo), as purchaser of SGALD Automotive – Sociedade Geral de Comercio e Aluguer de Bens, S.A. (‘ALD Portugal’) and LeasePlan Luxembourg S.A. (‘LP Luxembourg’), and submitted the proposed Sale and Purchase Agreement dated 22 March 2023 (the ‘Proposed Agreement’ or ‘Transaction Documents’).² The Proposed Agreement among other things foresees: (a) key terms of the draft Transitional Services Agreements (‘TSAs’), in compliance with paragraph 10 of the Commitments³ (Article 6.5 and Schedule 6.5(a) of the Proposed Agreement); (b) the use of ALD/LeasePlan brands in compliance with paragraph 10(b) of the Commitments (Article 8.2.3 of the Proposed Agreement) and (c) non-solicitation clauses in compliance with paragraph 17 of the Commitments (Article 15.1 of the Proposed Agreement).
- (4) The monitoring trustee, Alcis Advisers GmbH (the ‘Trustee’) has submitted an assessment on 28 April 2023 of CACF’s, on the one side, and CACF and Stellantis’s, on the other side, suitability as purchasers (‘Reasoned Opinion’) and, in particular, has indicated that they fulfil the criteria of the purchaser requirements in Section D of the Commitments attached to the Decision. In its Reasoned Opinion, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Businesses would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

2.1. Legal framework

- (5) Pursuant to paragraph 23 of the Commitments, the Commission has to verify that the remedy-taker fulfils the purchaser criteria and that the Divestment Businesses are being sold in a manner consistent with the Commission's Decision and the Commitments.
- (6) According to paragraph 22 of the Commitments, in order to be approved by the Commission, any remedy-taker must fulfil the following criteria:

² The Proposed Agreement has been signed by ALD S.A., ALD International GmbH, ALD International Group Holding GmbH, LeasePlan Corporation N.V. and FCA Bank, CACF.

³ See also paragraphs 2(h), 6(h), 10(i), 15(h), 20(h) and 24(i) of the Schedule to the Commitments.

- a) it shall be independent of and unconnected to ALD and its affiliated undertakings (this being assessed having regard to the situation following the divestiture);
- b) it shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses which it acquires as a viable and active competitive force in competition with the Parties and other competitors;
- c) it shall already be active in operational leasing and fleet management services in the EEA;
- d) the acquisition of the Divestment Businesses must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, any purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses, which it acquires.

(7) In addition, pursuant to paragraph 10 of the Commitments the Divestment Businesses shall include the following:

- a) For a transitional period of up to two (2) years after Closing (i.e., after the transfer of the legal title to the Divestment Businesses to the purchaser⁴), plus one additional optional year upon request of the purchaser, showing good cause, and provided that the Trustee confirms, in consultation with the Commission, the requirement for such one - year extension, at cost, of all current arrangements under which ALD, LeasePlan or their Affiliated Undertakings supply products or services to the Divestment Businesses, as detailed in the Schedule to the Commitments, unless otherwise agreed with the purchaser of each considered Divestment Business. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the team who requires access to such information in order to provide a transitional service required by a Divestment Business;
- b) Arrangements providing, at the purchaser's request, for a transition period during which the Ireland Divestment Business, the Norway Divestment Business and the Portugal Divestment Business shall be allowed to use the ALD brand and the Czech Divestment Business, the Finland Divestment Business and the Luxembourg Divestment Business shall be allowed to use the LeasePlan brand, during the time – with a maximum period of one year after Closing – and to the extent strictly required to implement practical changes such as changing signs on office buildings or letterheads.

⁴ Purchaser refers to the entity (or entities in case the Divestment Businesses are not all sold to the same single Purchaser) approved by the Commission as acquirer(s) of the Divestment Businesses in accordance with the criteria set out in Section D of the Commitments.

2.2. Brief description of the proposed purchasers

- (8) CACF is active in the consumer credit sector. It offers financing solutions for individual customers and for different kind of partners (banking, distribution, e-commerce, automotive). CACF is a wholly owned subsidiary of Crédit Agricole SA ('CA') which offers in France and abroad a wide range of banking and insurance-related services, including asset gathering, retail banking, specialised financial services and large customers.
- (9) Stellantis is active worldwide in the development, manufacturing, and distribution of automotive vehicles.
- (10) LeaseCo is a car leasing company jointly controlled by CACF and Stellantis.⁵

2.3. Purchaser criteria

2.3.1. Independence from the Parties

- (11) Pursuant to paragraph 22(a) of the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent from and unconnected to each of ALD and its affiliated undertakings (this being assessed having regard to the situation following the divestiture).
- (12) According to the information provided by ALD and the Trustee, there are no cross-investments, shareholdings, JVs, consortia or partnerships, common management and/or advisory function of executive and non-executive directors, between CACF, Stellantis and their affiliated undertakings and ALD and its affiliated undertakings.
- (13) With respect to commercial links, CACF and Stellantis have limited relations with ALD and its affiliates, both at group and country subsidiaries' level. Specifically:
- [...].
 - [...].
 - The Stellantis Group supplies vehicles to LeasePlan [...].
 - The Stellantis group supplies vehicles to ALD [...].
 - [...].
- (14) The Trustee considers that these relationships are all at arms' length, in the ordinary course of business and of limited scope for the size of the Parties, and therefore, do not affect the independence of the Purchasers.⁶
- (15) On the basis of the information provided by ALD and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the purchasers are independent and unconnected to ALD and its affiliated undertakings.

⁵ See Case M.10728 – CACF / STELLANTIS / FCA BANK / F2ML.

⁶ Reasoned Opinion, Section 4.1.

2.3.2. *Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor*

- (16) Pursuant to Article 22(b) of the Commitments, the Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses which it acquires as a viable and active competitive force in competition with the Parties and other competitors.

2.3.2.1. Financial resources

- (17) In 2022 the revenues of CA, to which CACF belong, were EUR 22.73bn, gross operating income of EUR 9.26bn, and net income of EUR 5.49bn. Moreover, CACF's latest available credit ratings confirm that it is a financially sound company.⁷ On that basis, the Monitoring Trustee concluded that CACF demonstrates financial robustness.⁸

- (18) LeaseCo is a joint venture fully owned by CACF and Stellantis. The financial resources of CACF were examined above. Stellantis' 2022 revenues were EUR 179.6bn, up by 18% compared to 2021. Fitch upgraded the rating of Stellantis N.V. from BBB- to BBB, with a stable outlook.⁹ On that basis, the Monitoring Trustee concluded that Stellantis demonstrates financial robustness.¹⁰

2.3.2.2. Proven expertise and current activity in operational leasing

- (19) Stellantis and CACF are active in car leasing through LeaseCo who was recently created by the merger of two established and large international car leasing companies, Leasys and Free2MoveLease,¹¹ present in 10 EEA countries (11 countries overall) and representing a significant combined fleet.¹²

- (20) In addition, CACF is active in car leasing, including in operational leasing, through FCA Bank. FCA Bank was for over 20 years the owner of Leasys and it is currently active in car leasing in 10 EEA countries (11 countries overall), mostly through its subsidiary Drivalia, operating a sizeable fleet.¹³

- (21) Stellantis, LeaseCo and CACF therefore are active in operational leasing and have proven expertise to allow them to maintain and develop the Divested Businesses as a viable and active competitors to ALD and other competitors.

2.3.2.3. Incentive

- (22) The Monitoring Trustee notes that the acquisition of the Divestment Businesses coincides with strategy of Stellantis and CACF to reinforce the activities of LeaseCo in the countries in which it is already present and CACF's strategy to expand FCA Bank activities to new countries.¹⁴ Stellantis, LeaseCo and CACF

⁷ Reasoned Opinion, Section 6.1.

⁸ Reasoned Opinion, Section 6.5.

⁹ Reasoned Opinion, Section 6.3.

¹⁰ Reasoned Opinion, Section 6.5.

¹¹ See Case M.10728 – CACF / STELLANTIS / FCA BANK / F2ML.

¹² Reasoned Opinion, Section 5.1.2.

¹³ Reasoned Opinion, Section 5.1.1.

¹⁴ Reasoned Opinion, Section 7.1.

therefore have the incentive to maintain and develop the Divested Businesses as a viable and active competitors.¹⁵

2.3.2.4. Conclusions

- (23) Based on the information provided by ALD and taking into account the Trustee's Reasoned Opinion, the Commission considers that CACF, Stellantis and LeaseCo, who are already active in car leasing, have sufficient financial resources, proven expertise and the incentives to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with ALD and other competitors.

2.3.3. Activity in operational leasing and fleet management services in the EEA

- (24) Pursuant to Article 22(c) of the Commitments the purchaser shall already be active in operational leasing and fleet management services in the EEA.
- (25) As described in Section 2.3.2.2 above, Stellantis, LeaseCo and CACF are active in operational leasing and fleet management services in the EEA.

2.3.4. Absence of prima facie competition problems

- (26) Pursuant to paragraph 22(d) of the Commitments, the transfer of the Divestment Businesses to a suitable remedy-taker must neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.
- (27) ALD expects that the required clearances from the competent competition authorities can be obtained speedily. Likewise, other regulatory approvals are not expected to delay the implementation of the Commitments.¹⁶
- (28) ALD and the Trustee consider that the acquisition of the Divestment Businesses by CACF, on the one hand, and CACF and Stellantis, through LeaseCo, on the other hand, does not raise any *prima facie* competition concerns, either horizontal or vertical, in any of the six countries.¹⁷
- (29) The acquisition of the Divestment Businesses in Norway, Ireland, Czechia and Finland by CACF does not bring about any affected markets, either horizontally or vertically. Only limited horizontal overlaps have been identified between CACF and Stellantis, through LeaseCo and the Divestment Businesses in the markets for operational leasing and fleet management in Luxembourg and Portugal. The combined share of CACF and Stellantis, through LeaseCo, and the Divestment Businesses in Luxembourg and Portugal would remain below [10-20]% and [30-40]% respectively.¹⁸
- (30) There is also a vertical relationship between Stellantis' activities – LeaseCo's jointly controlling parent with CACF – in the markets for manufacture and supply of passenger cars and light commercial vehicles (upstream) and the Divestment

¹⁵ Reasoned Opinion, Section 7.7.

¹⁶ Reasoned Proposal, paragraph 205.

¹⁷ Reasoned Proposal, paragraph 12; Reasoned Opinion, paragraph 26.

¹⁸ Reasoned Proposal, Tables 15-18.

Businesses' leasing activities (downstream) in Luxembourg and Portugal.¹⁹ However, according to ALD and the Trustee, Stellantis, through LeaseCo, would lack both the ability and incentive to engage in anticompetitive foreclosure strategies as a result of the proposed divestiture Transaction.²⁰

- (31) On the basis of the above and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the acquisition of the Divestment Businesses by CACF, on the one hand, and CACF and Stellantis, through LeaseCo, on the other hand, is neither likely to create *prima facie* competition concerns, nor give rise to a risk that the implementation of the Commitments will be delayed.
- (32) This *prima facie* assessment is based on the information available for the purpose of this purchaser approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by CACF, on the one hand, and CACF and Stellantis, through LeaseCo, on the other hand, by the Commission and any competent competition authority under applicable merger control rules.

2.3.5. *Conclusion on purchaser criteria*

- (33) In light of the above considerations and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that CACF, Stellantis and LeaseCo meet the purchaser criteria set out in paragraph 22 of the Commitments.

2.4. **Assessment of the Transaction Documents**

- (34) As indicated in paragraph (3) above, the Transaction Documents consist of the Proposed Agreement, covering the sale of shares and the transfer of the Divestment Businesses, as well as the key draft terms of the proposed TSAs, which regulate the transitional services to be provided to the Divestment Businesses by ALD.
- (35) The Trustee reviewed the Transaction Documents and confirmed that they fulfil the condition of the Commitments to transfer the Divestment Businesses to a suitable purchaser. The Commission agrees with that assessment.
- (36) The Trustee considered that the terms of the Transaction Documents reflect ALD's obligations set out in the Commitments.
- (37) In particular, the Trustee noted that the TSAs are consistent with the contents and the purposes of the Commitments, since ALD is obliged to provide certain services to the Divestment Businesses for [...] as of the closing date, as set out in paragraph 10 of the Commitments. Prices of the services are fixed and in line with the past practice on an at cost-basis and ALD has no explicit right to interrupt and/or terminate the provision of services (beyond suspending the TSAs following a material breach by the Divestment Businesses).²¹ Finally, [...], allowing for sufficient flexibility while safeguarding the necessary to the benefit of the Divestment Businesses' viability.²²

¹⁹ Reasoned Proposal, paragraph 218.

²⁰ Reasoned Proposal, paragraphs 221-251; Reasoned Opinion, paragraph 25.

²¹ Paragraph 10(a) of the Commitments.

²² Reasoned Opinion, paragraph 32. See also paragraph 11 of the Commitments which foresees that ALD commits for a period to use its best efforts to have the license enabling the LeasePlan Divestment Businesses to use the CarNext platform to sell used vehicles remain in effect; or, should this not be possible, (ii) to procure that LeasePlan enables the LeasePlan Divestment Businesses, as

(38) In light of the above considerations, the Commission concludes that the Transaction Documents are consistent with the Commitments and that, accordingly, the Divestment Businesses are being transferred in a manner consistent with the Commitments.

3. CONCLUSION

(39) On the basis of the above assessment, the Commission approves:

- CACF as a suitable purchaser for the above-mentioned reasons for the Divestment Businesses of LP Finland, ALD Norway, ALD Ireland and LP Czechia;
- CACF and Stelantis, through LeaseCo, as a suitable purchaser for the above-mentioned reasons for the Divestment Businesses of LP Luxembourg and ALD Portugal.
- On the basis of the Transaction Documents, the Commission further concludes that the Divestment Businesses are being sold in a manner consistent with the Commitments.

(40) This decision only constitutes approval of the proposed purchasers identified herein and a confirmation that the Transaction Documents are consistent with the Commitments. This decision does not constitute a confirmation that ALD has complied with its Commitments.

(41) This decision is based on paragraph 23 of the Commitments attached to the Commission Decision of 25 November 2022.

For the Commission

(Signed)
Olivier GUERSENT
Director-General

from the date on which the license enabling the LeasePlan Divestment Businesses to use the CarNext platform would terminate, to use LeasePlan's back-up digital remarketing solutions which LeasePlan is required to maintain under banking regulatory rules.