

Class Slides

Hertz/Avis Budget/Dollar Thrifty

Merger Antitrust Law

Fall 2017

Georgetown University Law Center

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2010 Hertz/Dollar Thrifty deal

- 2010 merger agreement
 - Hertz to buy Dollar Thrifty for \$41.00 per share (= \$1.3 equity value)
 - \$6.88 in special Dollar Thrifty dividend (= \$200 million)
 - \$25.92 to be paid by Hertz in cash (= \$756 million)
 - \$12.88 in Hertz stock (valued on the closing price on April 23, 2010) (= \$317 million)
 - DT shareholders will hold 5.5% of Hertz after closing
 - 19% deal premium to 30-day closing average
 - \$180 million in annual recurring synergies
 - Primarily in fleet, IT systems, and procurement savings

2010 Hertz/Dollar Thrifty deal

■ Hertz

- \$7.1 billion in revenues
- Hertz and Advantage brands
- Hertz: 8200 rental locations worldwide
 - Premium global rental car brand
 - Focus on corporate and high-end leisure
 - #1 in U.S. airport rentals (78 major airports)
- Advantage: 26 airports in the U.S.
 - “Flanker” brand to compete for price-conscious travelers at airports
 - Lower price proposition/fewer service attributes

2010 Hertz/Dollar Thrifty deal

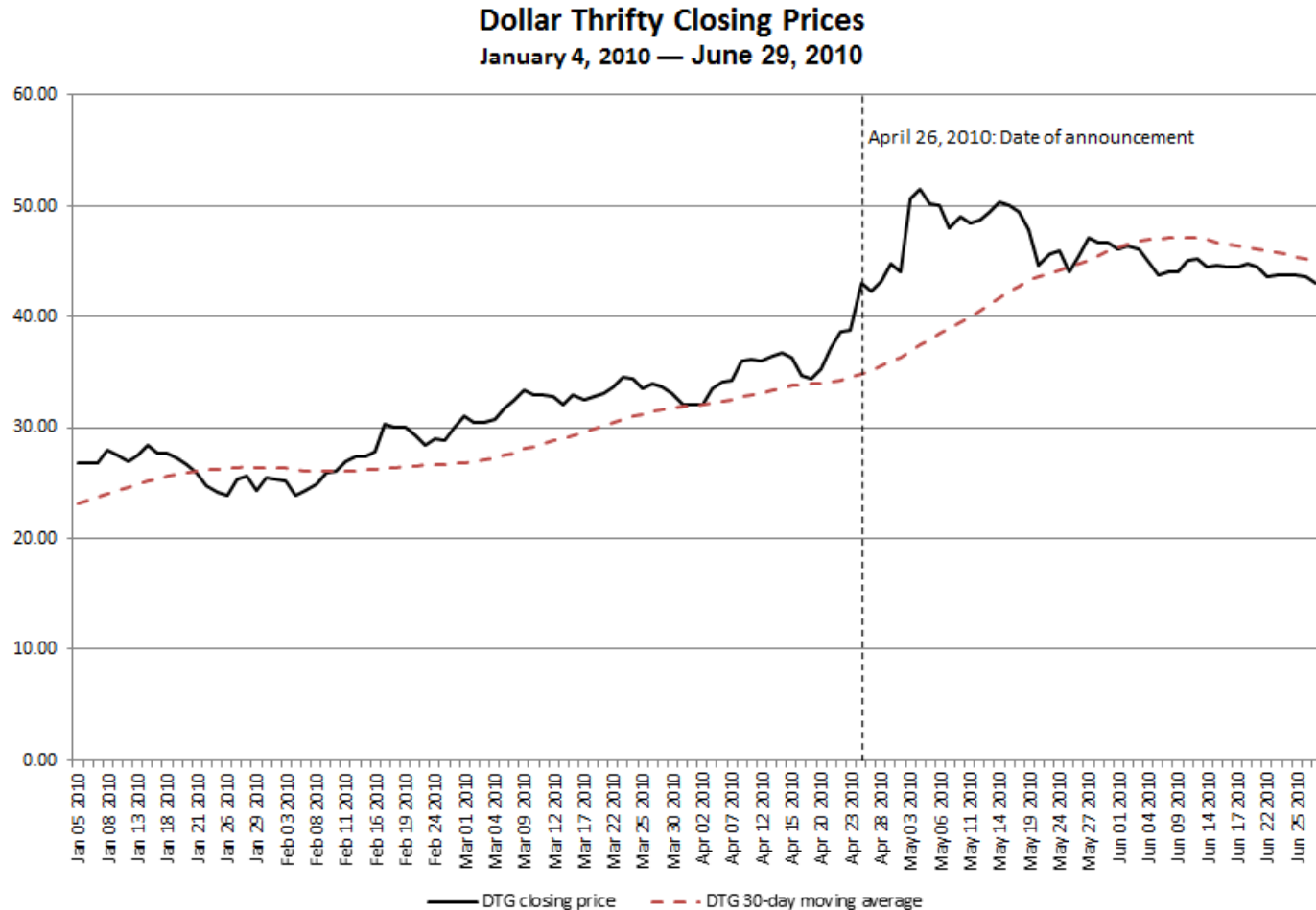
- Dollar Thrifty
 - \$1.5 billion in revenues
 - \$1.9 global enterprise value
 - Dollar Rent A Car and Thrifty Car Rental brands
 - “Middle market” airport brands
 - 1558 corporate and franchise locations worldwide
 - 298 corporate-owned
 - 1260 franchisee locations

2010 Hertz/Dollar Thrifty deal

Why did Dollar Thrifty to do this deal?

Why did Hertz want to do this deal?

Dollar Thrifty business rationale



Hertz business rationale



- Premium global brand competing with Avis, National
- Corporate, higher-end leisure, special occasions
- High service, higher-end fleet mix
- Making inroads in Off-Airport segment historically dominated by Enterprise



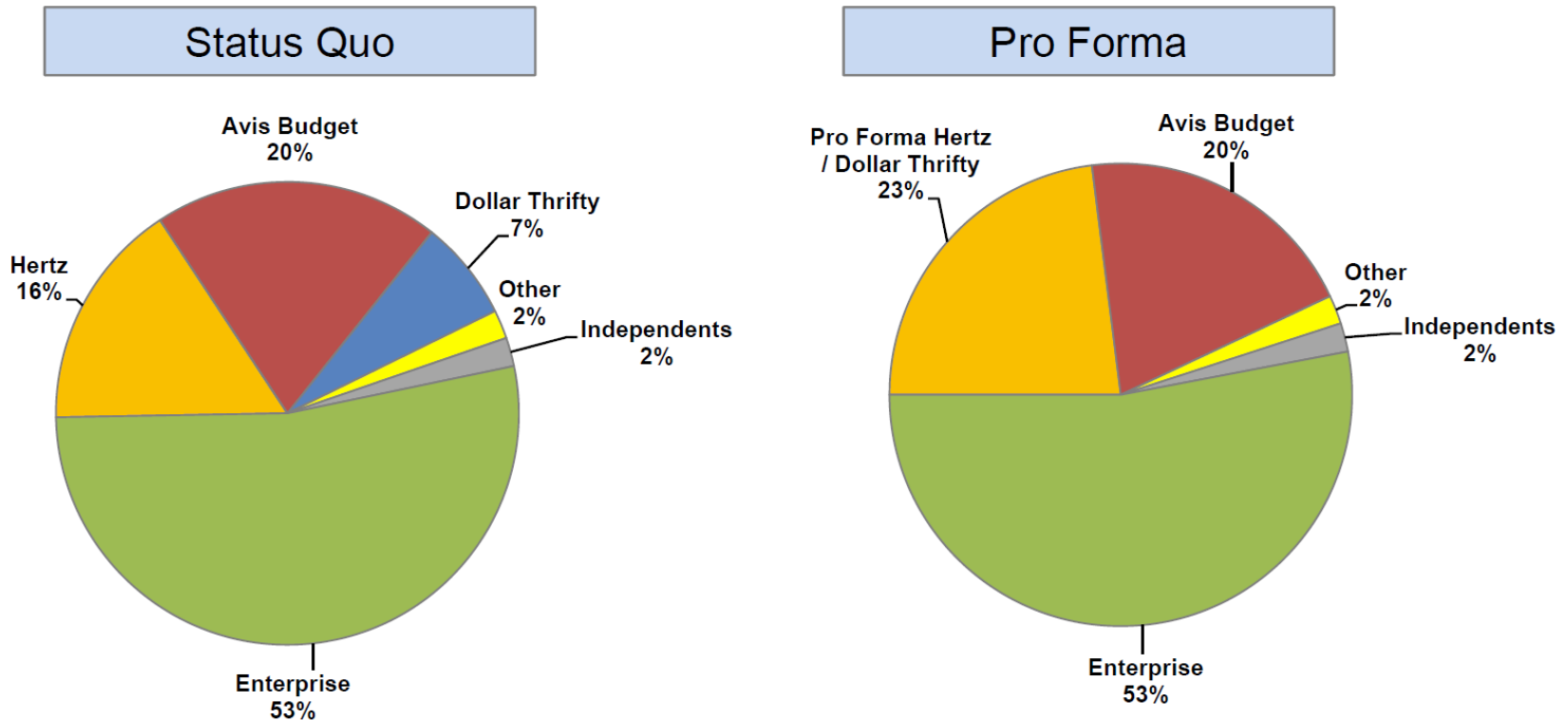
- Middle market airport brands competing with, but differentiated from Enterprise, Budget, Alamo
- Value proposition emphasizing lower price but consistently delivering essential services (speed, reliability)
- Consider dual brand operationally, but keep separate for marketing, positioning, e.g., separate websites



- Flanker airport brand to compete for economy leisure business against Payless, Fox, etc.
- Lower price proposition for price-focused leisure customers
- Reliable, clean cars, but fewer service attributes

Hertz business rationale

Total U.S. Rental Car Market Revenue Share 2009



Source: Auto Rental News, 2010 Fact Book

Hertz business rationale

Significant Strategic & Financial Benefits

Strategic Rationale

- Gain instant scale in middle tier sector with established brand and airport infrastructure
- Allows Hertz to pursue aggressive value strategy without risking dilution to Hertz brand
- Provides Hertz with multiple strategic options to address leisure business and compete with multi-brand peers in all three tiers of the market

Significant Synergy Potential

- At least \$180 million of annual run-rate synergies expected
- Key areas of cost reduction / operational improvement include
 - Procurement: significant portion of Dollar Thrifty's spend is decentralized
 - IT: overlapping systems and future capital spend
 - Fleet: benefit from fleet sharing and reduced cap. cost
 - Public company costs

Positive Financial Impact

- 20% equity used to maintain strong credit profile

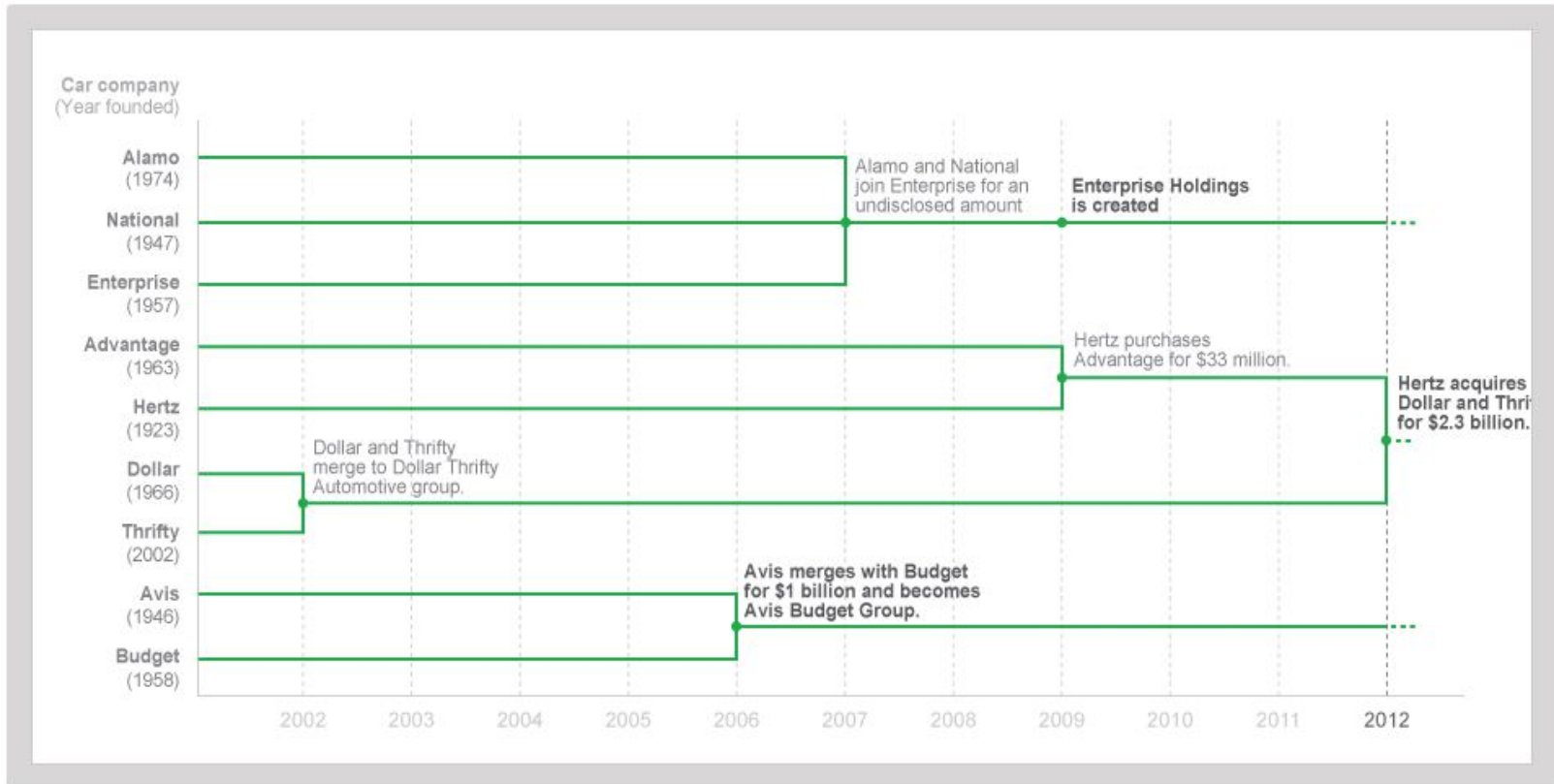
(\$ in millions)

As of December 31, 2009

	Hertz Standalone	Hertz Pro Forma
Total Corp. Debt / Corp. EBITDA	4.8x	4.4x
Total Corp. Debt / Corp. EBITDA (w/ syn)		3.7x
Total Debt / Gross EBITDA	3.6x	3.4x
Total Debt / Gross EBITDA (w/ syn)		3.2x

- Earnings accretive

The competitive landscape



Source: USA TODAY research
By Kevin A. Kepple, Maureen Linke and Denny Gainer, USA TODAY

2010 deal timeline

Late 2007	DT considers “strategic options” and approaches Hertz and Dollar Thrifty
June 2008	Avis Budget terminates negotiations
March 2009	DT terminates negotiations with Hertz
April 2009	Hertz buys Advantage
December 4, 2009	Hertz and DT resume negotiations
December 22, 2009	Hertz gives “indication of interest” of \$30 (\$15 cash/\$15 stock)
December 31, 2009	DT willing to continue negotiations if price increased to the mid-\$30s Tells Hertz that, after price, certainty of closing is the most important issue (especially with respect to antitrust “approvals”)
January 25, 2010	Hertz gives new “indication of interest” of \$35 (\$21 cash/\$14 stock)
January 27, 2010	DT board decides to continue negotiations with Hertz and not invite bids from Avis Budget or others

2010 deal timeline

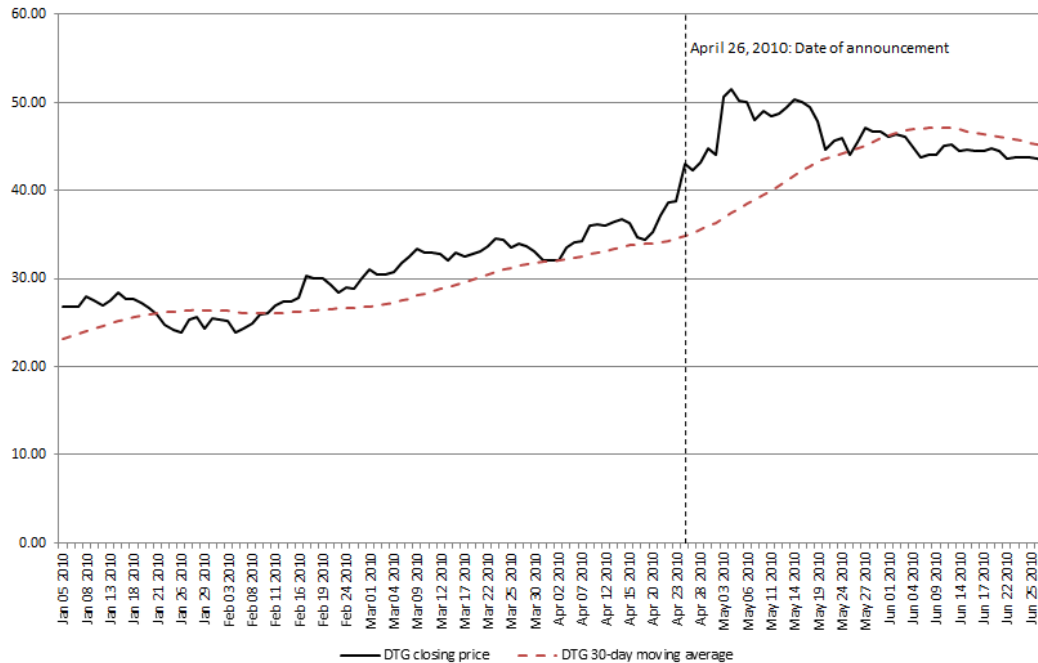
March 1, 2010	Advisers discuss draft risk-shifting provisions in merger agreement
March 2, 2010	Hertz agrees to accept obligation to divest business locations and lines < \$100-150 million in gross revenues and < \$10-15 million in EBITDA in calendar year 2009
March 3, 2010	DT terminates negotiations in light of regulatory offer and suspends due diligence
March 8, 11, 2010	Further discussions between Thompson and Frissora
March 12, 2010	Hertz sends DT new draft agreement with an ARTF of 4.5%
March 22, 2010	Hertz increases divestiture limit < \$400 million (2009 gross revenues)
March 26, 2010	DT allows due diligence to proceed
April 8, 2010	DT proposes \$44.96 price (50/50 cash and stock)
April 9, 2010	Hertz suspends due diligence and terminates negotiations
April 16, 2010	DT informs Hertz that it is interested in a deal only if >\$40 (50/50) Hertz counters with \$38 (80/20) DT counters with \$42 (80/20) Hertz terminates discussions

2010 deal timeline

- April 21, 2010 Hertz proposes “final offer”: \$40 (80/20)
Contingent on signing of a definitive agreement no later than
April 25
- April 22, 2010 DT board concludes that this Hertz will not significantly increase
bid
- Negotiations continue and parties agree to:
-- \$41 (80/20)
-- 3.5% ARTF +up to \$5 million reimbursement of expenses
- April 25, 2010 Hertz and DT boards approve
Agreement and Plan of Merger executed
Public announcement

Dollar Thrifty preannouncement run-up

Dollar Thrifty Closing Prices
January 4, 2010 — June 29, 2010



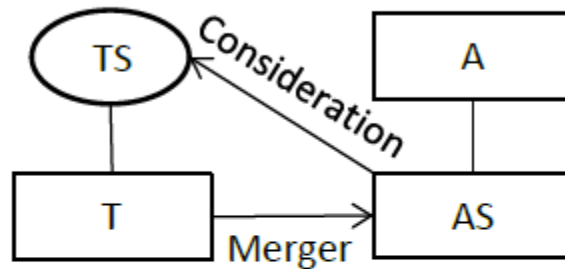
Closing Price Changes
(compared to prior months)

	1-month	2-months	3-months
DTG	12.3%	36.9%	56.7%
DJIA	2.9%	9.0%	10.1%

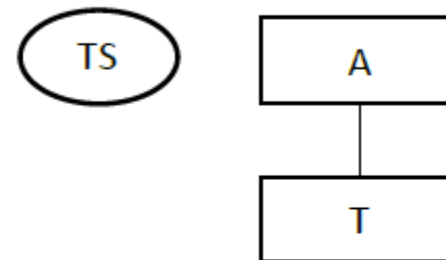
Form of the deal

- Reverse triangular merger

Before:



After:



where T Target firm
TS Target firm's shareholders
A Acquiring firm
AS Acquisition subsidiary

The deal price

■ Payments to Dollar Thrifty shareholders

\$6.88	Dollar Thrifty special cash dividend
\$25.92	Cash paid by Hertz
\$8.20	0.6366 Hertz shares, valued on the closing price on April 23, 2010 (the closing on the last business day before the announcement on April 26, 2010)
\$41.00	Total consideration

■ Some implications

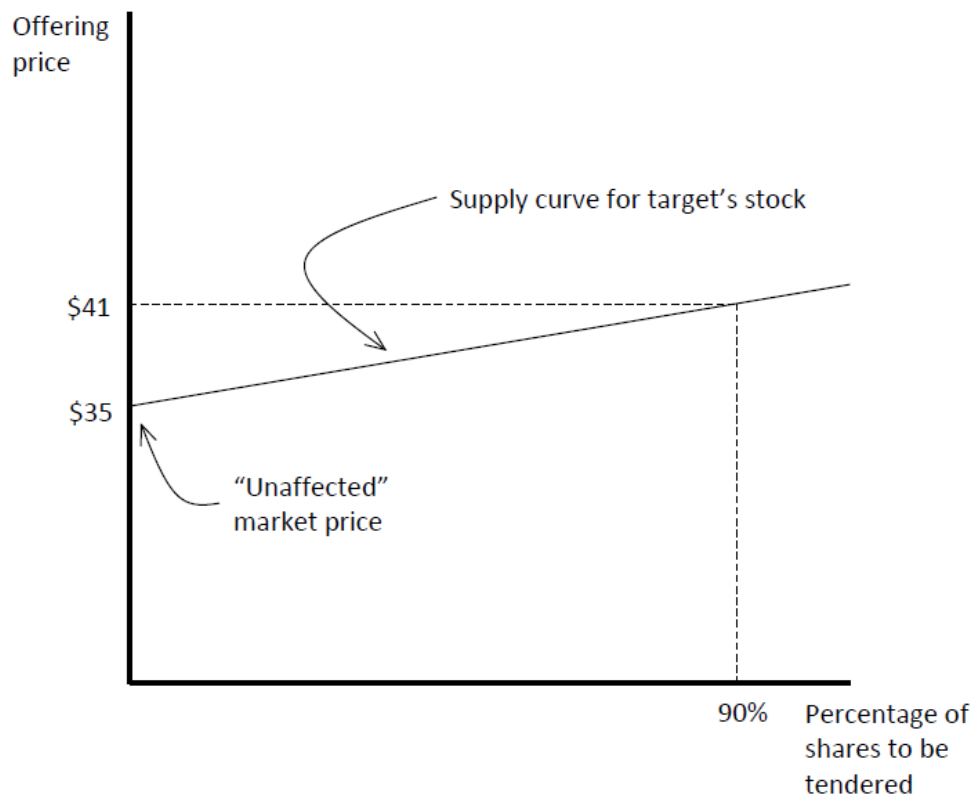
- Special DTAG cash dividend = \$200 million →
 - ~29m DTAG shares
 - DTAG would receive \$953m in cash
 - Hertz would only pay \$753 m in case
 - Total deal value to DTAG shareholders = \$1.2 billion

Deal premium

- Why did Hertz pay a deal premium?

Deal premium

- Why did Hertz pay a deal premium?
 - Upward-sloping demand curve for DTAG stock



Deal premium

- Why did Hertz pay a deal premium?
 - Bargaining game over value gain
 - Hertz set the going concern value V_c of DTAG at \$932 million (after dividend)
 - Hertz claimed an expected annually recurring synergy gain of \$180 million
 - Value as a perpetual annuity (discounted at rate r):

$$V_g = \frac{A}{r} = \frac{\$180 \text{ million}}{0.07} = \$2.57 \text{ billion}$$

- Value as a 10-year annuity:

$$V_g = A \left[\frac{1 - (1+r)^{-n}}{r} \right] = \$180 \text{ million} \left[\frac{1 - (1+0.07)^{-10}}{0.07} \right] = \$1.26 \text{ billion}$$

- So Hertz expects that the total value V_t of Dollar Thrifty postmerger will be:

$$\begin{aligned} V_t &= V_c + V_g \\ &= \$932 \text{ million} + \$1.26 \text{ billion} \\ &= \$2.17 \text{ billion} \end{aligned}$$

Deal premium

- Why did Hertz pay a deal premium?
 - Bargaining game over value gain
 - BUT the original Hertz shareholders will not own the whole company because their interest is being diluted by the Hertz stock going to the DTAG shareholders
 - The original Hertz shareholders would hold only 94.5% of the Hertz stock postmerger, so that would get only that portion of V_t (= \$2.075 billion)
 - So Hertz shareholders should be willing to pay a maximum of \$2.075 billion for the deal (or about \$71 per DTAG share)

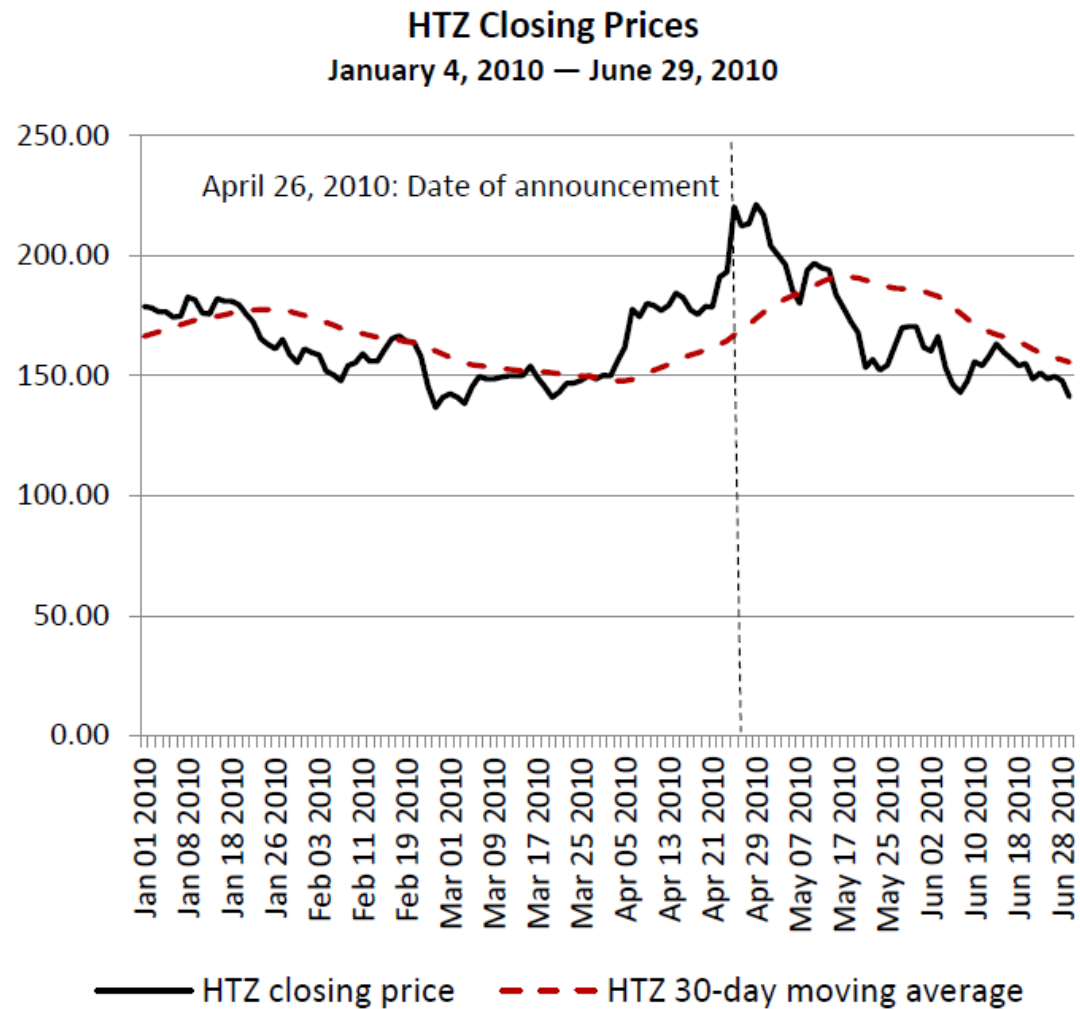
Deal premium

- Why did Hertz pay a deal premium?
 - Bargaining game over value gain
 - DTAG shareholders will not accept anything lower than their current stock price
 - BUT they can also bargain for some of the gain resulting from the deal, since unless they agree to the deal Hertz shareholder will receive no gain
 - At \$41 per share under Hertz's terms, DTAG shareholders receive a significant deal premium over the unaffected price:

	Closing price	Ex dividend (= \$6.88)	Deal premium
Mar. 23, 2010	34.60	27.72	18.5%
Feb. 23, 2010	28.37	21.49	90.8%
Jan. 22, 2010	24.29	17.41	135.5%

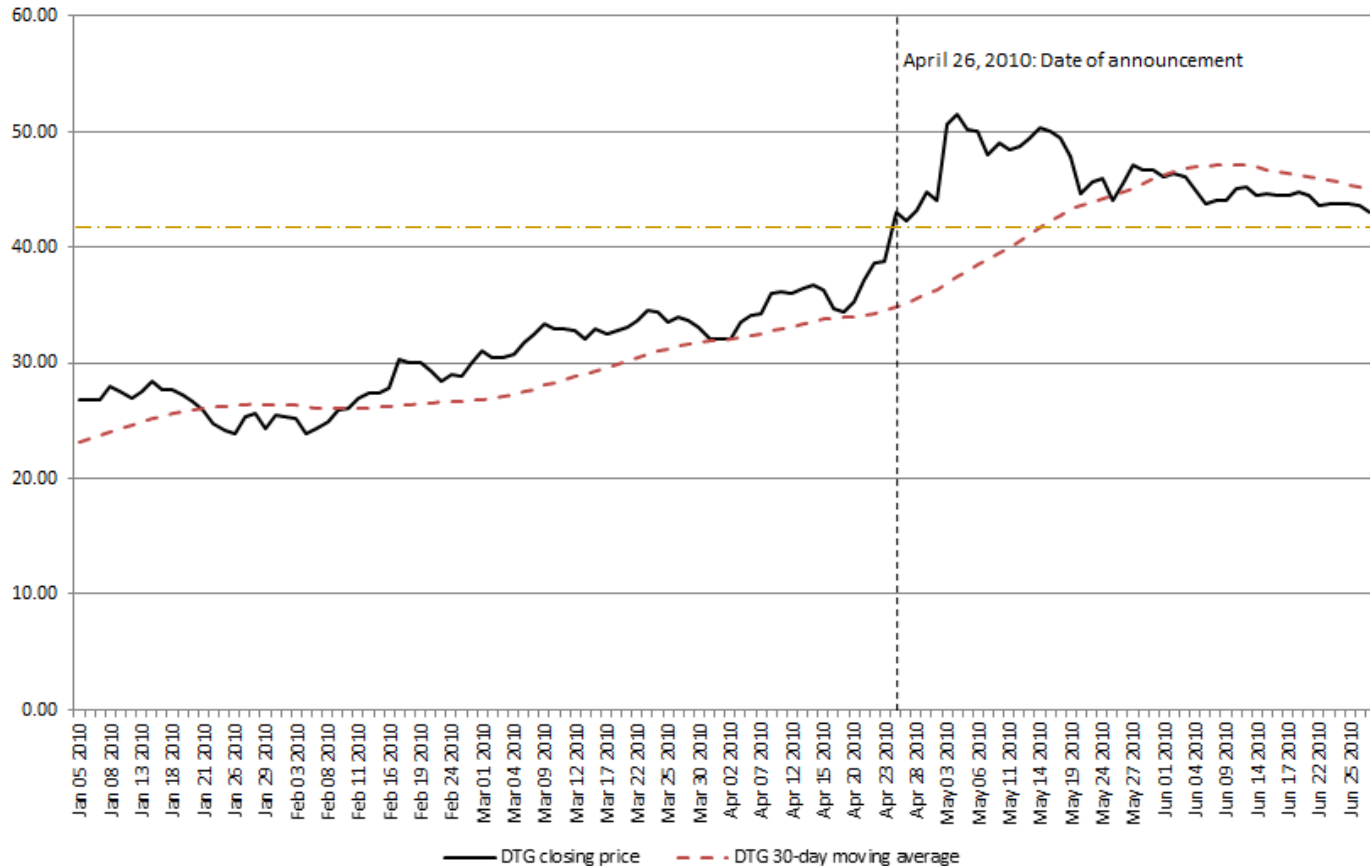
- So this looks like a good deal to the DTAG shareholders

Market reaction



Market reaction

Dollar Thrifty Closing Prices
January 4, 2010 — June 29, 2010



Antitrust risk

■ Generally

- To the seller: Risk that the deal will not close/seller not get money
- To the buyer: Risk that the buyer will be forced to close a restructured deal at a loss (a “bad” deal)

■ Critical contract provisions

- *Conditions precedent*: Deal does not close until satisfied
 - *Closing date* usually with 5 business days of satisfaction of all conditions precedent
- *Termination date*: Date on which either party can terminate agreement without cause

■ Party objectives

- Seller wants deal to close before the termination date
- Buyer—
 - Wants the deal to close before the termination date if a good deal
 - Does not want the deal to close before the termination date if a bad deal

Antitrust risk

- What was the antitrust risk in this deal?

The Competitive Landscape

■ U.S. rental car market 2011

Company	Cars	Locations	%Cars
Enterprise Holdings (Alamo, Enterprise, National)	920,861	6,187	52.3%
Hertz (includes Advantage)	320,000	2,500	18.2%
Avis Budget Group	285,000	2,300	16.2%
Dollar Thrifty Automotive Group	118,000	445	6.7%
U-Save Auto Rental System	11,500	325	0.7%
Fox Rent A Car	11,000	13	0.6%
Payless Car Rental System	10,000	32	0.6%
ACE Rent A Car	9,000	90	0.5%
Zipcar	7,400	128	0.4%
Rent-A-Wreck of America	5,500	181	0.3%
Triangle Rent-A-Car	4,200	28	0.2%
Affordable/Sensible	3,300	179	0.2%
Independents	55,000	5,350	3.1%
	1,760,761		100.0%

The Competitive Landscape

- U.S. rental car market 2011

Company	Overall			Airport
	Cars	Locations	%Cars	
Enterprise Holdings (Alamo, Enterprise, National)	920,861	6,187	52.3%	34.0%
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Deal Statistics

■ Nationally

	Overall	Airport
Combined share	24.9%	51.0%
Pre-HHI	3374	2601
Delta	244	1300
Post-HHI	3618	3901

■ Revenues from airport locations

- Hertz: 78.6%
- Dollar Thrifty: 87.5%

How do the parties allocate the antitrust risk?

- Closing conditions
- Termination
 - Can provide for extensions in certain contingencies
- Affirmative covenants
 - To increase the probability that the conditions precedent will be satisfied
- Antitrust reverse termination fee (ARTF)
 - Payable by the buyer to the seller if the antitrust closing conditions are not satisfied when the deal is terminated

Conditions precedent

- Standard antitrust-related provisions
 1. Regulatory authorizations
 2. No injunction or legal restraint
 3. No threatened or pending litigation by an antitrust authority

Conditions precedent

1. Regulatory authorizations

- Example: 2010 Hertz/Dollar Thrifty § 7.01(d)—Applies to both parties

Regulatory Authorizations. **Each of the HSR Approval and the CBC Approval shall have been obtained and shall remain in full force and effect.** All other actions or nonactions, waivers, clearances, consents and approvals of (or filings or registrations with) any Governmental Authority identified on Section 7.01(d) of the Company Disclosure Schedule shall have been obtained or made or have occurred prior to the Effective Time.

Conditions precedent

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Conditions precedent

2. No injunction or legal restraint

- Example: 2010 Hertz/Dollar Thrifty § 7.01(f)—Applies to both parties

No Injunctions or Restraints. **No temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any court of competent jurisdiction or other statute, law, rule, legal restraint or prohibition (collectively, “Restraints”)** shall be in effect restraining, enjoining, prohibiting or otherwise making illegal the consummation of the Merger and the other transactions contemplated hereby; *provided*, that a party shall not be relieved of its obligation to effect the Merger and the other transactions contemplated hereby if it has not used its reasonable best efforts to contest, appeal and remove any such Restraint.

Conditions precedent

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- Example: 2010 Hertz/Dollar Thrifty § 7.01(f)—Applies to both parties

No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any court of competent jurisdiction or other statute, law, rule, legal restraint or prohibition (collectively, “Restraints”) **shall be in effect restraining, enjoining, prohibiting or otherwise making illegal the consummation of the Merger and the other transactions contemplated hereby;** *provided*, that a party shall not be relieved of its obligation to effect the Merger and the other transactions contemplated hereby if it has not used its reasonable best efforts to contest, appeal and remove any such Restraint.

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Conditions precedent

3. No threatened or pending litigation by an antitrust authority

- Example: 2010 Hertz/Dollar Thrifty § 7.02(d)—Applies to both parties

No Litigation. There shall not be instituted or pending any suit, action or proceeding by the United States Federal Trade Commission or the Antitrust Division of the United States Department of Justice under any U.S. Antitrust Law or the Commissioner of Competition appointed pursuant to Section 7 of the Competition Act (Canada) under the Competition Act (Canada) (the “Commissioner”)

(i) challenging or seeking to make illegal, to delay materially or otherwise directly or indirectly to prohibit the consummation of the Merger or any of the other transactions contemplated hereby,

Conditions precedent

3. No threatened or pending litigation by an antitrust authority

- Example: 2010 Hertz/Dollar Thrifty § 7.02(d)—Applies to both parties (con't)

No Litigation. There shall not be instituted or pending any suit, action or proceeding by the United States Federal Trade Commission or the Antitrust Division of the United States Department of Justice under any U.S. Antitrust Law or the Commissioner of Competition appointed pursuant to Section 7 of the Competition Act (Canada) under the Competition Act (Canada) (the “Commissioner”)

...

(ii) seeking to prohibit Parent’s ability to vote, transfer, receive dividends or otherwise exercise full rights of ownership with respect to the stock of the Surviving Entity or

Conditions precedent

3. No threatened or pending litigation by an antitrust authority

- Example: 2010 Hertz/Dollar Thrifty § 7.02(d)—Applies to both parties (con't)

No Litigation. There shall not be instituted or pending any suit, action or proceeding by the United States Federal Trade Commission or the Antitrust Division of the United States Department of Justice under any U.S. Antitrust Law or the Commissioner of Competition appointed pursuant to Section 7 of the Competition Act (Canada) under the Competition Act (Canada) (the “Commissioner”)

...

(iii) seeking to prohibit, limit, restrain or impair Parent’s ability to own, control, direct, manage, or operate or to retain or change any portion of the assets, licenses, operations, rights, product lines, businesses or interests therein of the Company or its Subsidiaries from and after the Effective Time or any of the assets, licenses, operations, rights, product lines, businesses or interests therein of Parent or its Subsidiaries,

Conditions precedent

3. No threatened or pending litigation by an antitrust authority

- Example: 2010 Hertz/Dollar Thrifty § 7.02(d)—Applies to both parties (con't)

except, in each case, where the remedy sought by such Governmental Authority is one that Parent would be required to accept consistent with its obligations under Section 6.03(a).

Termination provisions

- Standard provisions

1. At any time by mutual consent
2. By either party after the Termination Date (“drop-dead date”)
3. By either party if a law or court order (having exhausted all appeals) makes the closing unlawful

Termination provisions

1. At any time by mutual consent
 - Example: 2010 Hertz/Dollar Thrifty § 8.01(a)

SECTION 8.01 Termination. This Agreement may be terminated at any time prior to the Effective Time, except to the extent otherwise set forth below, whether before or after receipt of the Company Stockholder Approval, with any termination by Parent also being an effective termination by Merger Sub:

(a) by mutual written consent of Parent and the Company;

Termination provisions

2. By either party after the Termination Date (“drop-dead date”)
 - Example: 2010 Hertz/Dollar Thrifty § 8.01(b)(i)

(b) by either Parent or the Company:

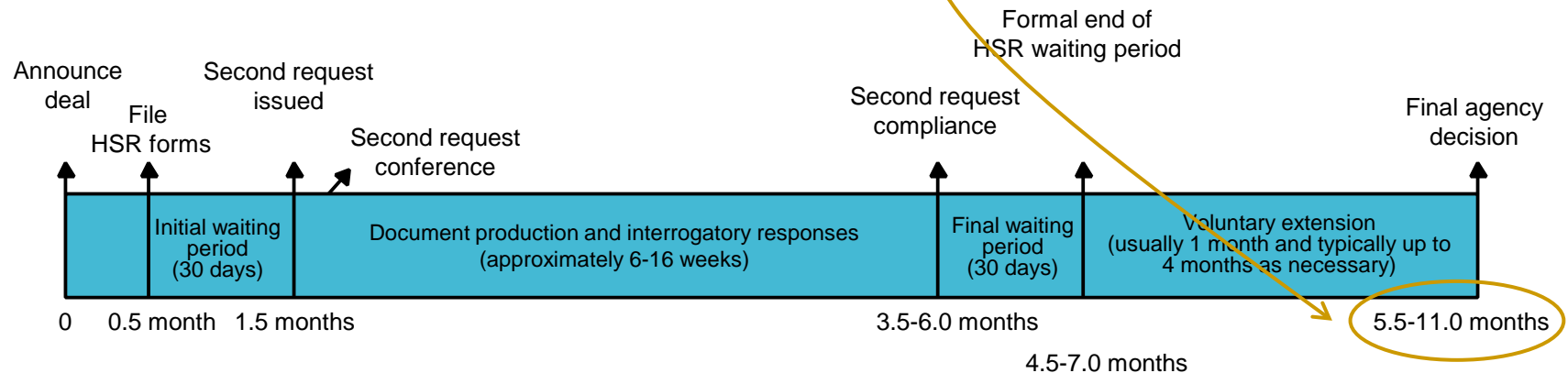
(i) if the Merger shall not have been consummated on or before 12 months after the date hereof (the “Termination Date”); provided, however, that the right to terminate this Agreement under this Section 8.01(b)(i) shall not be available to any party whose breach of any provision of this Agreement resulted in the failure of the Merger to be consummated on or before such date;

- Typically written so that it may not be invoked by a party whose breach of its contractual obligations resulted in the failure of the deal to close
- May be extended for additional time in specified circumstances
 - Example: To permit litigation

Termination provisions

■ Typical domestic transaction

Even with a “short” HSR Act investigation and an expedited litigation schedule, a 12-month drop-dead date is not going to provide a credible litigation threat to the investigating agency



- | | | | |
|------------------|--|--|--|
| Customer rollout | <ul style="list-style-type: none"> – First telephone call (voluntary request) – First presentation – Follow-up meetings – First DOJ/FTC customer interviews – First DOJ/FTC competitor interviews – Filings in other jurisdictions | <ul style="list-style-type: none"> – Second request conference – Collect and review documents – Prepare interrogatory responses – Depositions of employees – Additional meetings – Follow-up DOJ/FTC customer interviews and affidavits – Follow-up DOJ/FTC competitor interviews | <ul style="list-style-type: none"> – Final meetings with staff – Meetings with senior staff – Negotiate consent decree (if necessary) |
|------------------|--|--|--|

Termination provisions

2. By either party after the Termination Date (“drop-dead date”)

- Example: 2010 Hertz/Dollar Thrifty § 8.01(b)(i)

(b) by either Parent or the Company:

(i) if the Merger shall not have been consummated on or before 12 months after the date hereof (the “Termination Date”); **provided, however, that the right to terminate this Agreement under this Section 8.01(b)(i) shall not be available to any party whose breach of any provision of this Agreement resulted in the failure of the Merger to be consummated on or before such date;**

- Typically written so that it may not be invoked by a party whose breach of its contractual obligations resulted in the failure of the deal to close
- May be extended for additional time in specified circumstances
 - Example: To permit litigation

Termination provisions

3. By either party if a law or court order (having exhausted all appeals) makes the closing unlawful
 - Example: 2010 Hertz/Dollar Thrifty § 8.01(b)(ii)

(b) by either Parent or the Company:

...

(ii) if any Restraint having the effect of permanently restraining, enjoining, or otherwise prohibiting the Merger and the transactions contemplated by this Agreement shall be in effect and shall have become final and nonappealable; provided that the right to terminate this Agreement under this Section 8.01(b)(ii) shall not be available to any party that has not used its reasonable best efforts to contest, appeal and remove such Restraint;

Covenants

■ Basic idea

- Impose (or limit) obligations on the merging parties to work to satisfy the conditions precedent

■ Antitrust-related covenants

1. General “efforts” clause
2. Obligations to satisfy conditions precedent
3. Obligations to make HSR and other premerger notification filings
4. Obligations to obtain government consents and clearances
5. Obligations to respond to government requests
6. Obligations to consult in prosecuting defense
7. Obligations to “fix” the agency's concerns
8. Obligations to litigate
9. Limitations on the obligation to “fix” the antitrust concerns
10. Obligations not to make acquisitions that could impede the closing

Covenants

1. General “efforts” clause

- ❑ “Best efforts”
- ❑ “Reasonable best efforts”
- ❑ “Reasonable efforts”/“Commercially reasonable efforts”

- ❑ Example: 2010 Hertz/Dollar Thrifty § 6.03(a)

Subject to the terms and conditions of this Agreement, each of the Company and Parent shall use its **reasonable best efforts** to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with each other in doing, all things necessary, proper or advisable to consummate and make effective, the Merger and the other transactions contemplated by this Agreement prior to the Termination Date.

Covenants

2. Obligations to satisfy conditions precedent
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Without limiting the foregoing, each of the Company and Parent shall

(i) use their respective reasonable best efforts to cause the conditions set forth in Article VII to be satisfied on a timely basis so as to permit the consummation and effectiveness of the Merger and the other transactions contemplated by this Agreement prior to the Termination Date;

Covenants

3. Obligations to make HSR and other merger control filings
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Without limiting the foregoing, each of the Company and Parent shall

...

(ii) as promptly as reasonably practicable prepare and file the required submissions under all Antitrust Laws that the Company and Parent deem necessary, advisable or appropriate, in each case, with respect to the Merger and the other transactions contemplated hereby, provided, that the submissions required for the HSR Approval shall be filed within 20 days following the date hereof and the submissions required for the CBC Approval shall be filed within 10 days following the filing date of the submissions required for the HSR Approval;

Covenants

4. Obligations to obtain government consents and clearances
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Without limiting the foregoing, each of the Company and Parent shall

...

(iii) use their respective reasonable best efforts to obtain all necessary actions or nonactions, waivers, clearances, consents and approvals from Governmental Authorities (including the HSR Approval and the CBC Approval) and the making of all necessary registrations and filings and the taking of all steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by any Governmental Authority, prior to the Termination Date;

Covenants

5. Obligations to respond to government requests
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Without limiting the foregoing, each of the Company and Parent shall

...

(iv) as promptly as reasonably practicable following the receipt thereof, respond to (or properly reduce the scope of) any formal or informal request for additional information or documentary material received by the Company, Parent or any of their respective Subsidiaries from any Governmental Authority; and

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Without limiting the foregoing, each of the Company and Parent shall

...

(v) consult and cooperate with each other and consider in good faith the views of each other in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions or proposals made or submitted by or on behalf of the Company or Parent in connection with proceedings before any Governmental Authority with respect to the Merger and the other transactions contemplated hereby.

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Each of the Company and Parent shall cooperate with each other to the extent necessary to assist each other in the preparation of its filing or submission under any such Antitrust Law and, if requested, to promptly amend or furnish additional information thereunder. Each of the Company and Parent shall use its reasonable best efforts to (x) furnish to each other all information required for any filing or submission under any Antitrust Law and (y) keep each other reasonably informed with respect to the status of each action or nonaction, waiver, consent or approval sought from a Governmental Authority, in each case, in connection with the Merger and the transactions contemplated hereby.

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Each of the Company and Parent shall cooperate with each other to the extent necessary to assist each other in the preparation of its filing or submission under any such Antitrust Law and, if requested, to promptly amend or furnish additional information thereunder. **Each of the Company and Parent shall use its reasonable best efforts to (x) furnish to each other all information required for any filing or submission under any Antitrust Law and (y) keep each other reasonably informed with respect to the status of each action or nonaction, waiver, consent or approval sought from a Governmental Authority, in each case, in connection with the Merger and the transactions contemplated hereby.**

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Each of the Company and Parent shall cooperate with each other to the extent necessary to assist each other in the preparation of its filing or submission under any such Antitrust Law and, if requested, to promptly amend or furnish additional information thereunder. Each of the Company and Parent shall use its reasonable best efforts to (x) furnish to each other all information required for any filing or submission under any Antitrust Law and **(y) keep each other reasonably informed with respect to the status of each action or nonaction, waiver, consent or approval sought from a Governmental Authority**, in each case, in connection with the Merger and the transactions contemplated hereby.

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Each of the Company and Parent shall, in connection with the Merger and the other transactions contemplated hereby, without limitation:

(1) promptly notify the other of, and if in writing, furnish the other with copies of (or, in the case of oral communications, advise the other of) any communications from or with any Governmental Authority with respect to the Merger or the other transactions contemplated hereby,

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Each of the Company and Parent shall, in connection with the Merger and the other transactions contemplated hereby, without limitation:

. . .

(2) permit the other to review and discuss in advance, and consider in good faith the view of the other in connection with, any proposed written or oral communication with any Governmental Authority,

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Each of the Company and Parent shall, in connection with the Merger and the other transactions contemplated hereby, without limitation:

. . .

(3) not participate in any substantive meeting or have any substantive communication with any Governmental Authority unless it has given the other a reasonable opportunity to consult with it in advance and, to the extent permitted by such Governmental Authority, gives the other the opportunity to attend and participate therein,

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Each of the Company and Parent shall, in connection with the Merger and the other transactions contemplated hereby, without limitation:

...

(4) furnish the other party's outside legal counsel with copies of all filings and communications between it and any such Governmental Authority with respect to the Merger and the other transactions contemplated hereby, provided that such material may be redacted as necessary (I) to comply with contractual arrangements, (II) to address good faith legal privilege or confidentiality concerns and (III) to comply with applicable Law

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Each of the Company and Parent shall, in connection with the Merger and the other transactions contemplated hereby, without limitation:

. . .

(5) furnish the other party's outside legal counsel with such necessary information and reasonable assistance as the other party's outside legal counsel may reasonably request in connection with its preparation of necessary submissions of information to any such Governmental Authority.

Covenants

6. Obligations to consult in prosecuting defense
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(a) (con't)

Each party shall consult with the other party and consider in good faith the views of the other party prior to entering into any agreement, arrangement, undertaking or understanding (oral or written) with any Governmental Authority relating to any Antitrust Law with respect to the Merger or the other transactions contemplated hereby; provided, that subject to its undertakings in Section 6.03(c), the final determination as to the appropriate course of action shall be made by Parent.

Covenants

7. Obligations to “fix” the agency’s concerns
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(b)

In furtherance, and not in limitation of the foregoing, each of the Company and Parent agrees to cooperate with each other and use its reasonable best efforts to resolve such objections, if any, as may be asserted by the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice, the CBC, state antitrust enforcement authorities or competition authorities of any other nation or other jurisdiction or any other Governmental Authority of competent jurisdiction with respect to the transactions provided for in this Agreement under Antitrust Laws, to permit the Merger and the other transactions contemplated hereby to be consummated prior to the Termination Date.

Covenants

8. Obligations to litigate

□ Example: 2010 Hertz/Dollar Thrifty § 6.03(b) (con't)

If any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging the transactions provided for in this Agreement as violative of any Antitrust Laws or that would otherwise prevent, materially impede or delay the consummation of the Merger and the other transactions contemplated hereby, each of the Company and Parent shall use its reasonable best efforts to cooperate and take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with each other in doing, all things necessary, proper or advisable to as promptly as reasonably practicable vigorously contest and resist any such action or proceeding, including appeal, and to have vacated, lifted, reversed, or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that restrains, enjoins, prohibits, prevents, or restricts or would otherwise materially impede or delay the consummation of the Merger and the other transactions contemplated hereby, to permit the Merger and the other transactions contemplated hereby to be consummated in the most expeditious manner practicable.

Covenants

9. Limitations on the obligation to “fix” the antitrust concerns
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(c)

For purposes of Section 6.03(a) and (b), Parent’s “reasonable best efforts” shall include an obligation of Parent and its Subsidiaries to license, franchise, divest or hold separate any business locations or business lines of the Company, Parent or their respective Subsidiaries (including the Advantage business locations and business line owned by Parent and its Subsidiaries (“Advantage”)), or to take any similar measure, reasonably necessary to secure HSR Approval or CBC Approval (a “Divestiture Action”).

- Standing alone, this is an unqualified hell or high water provision
- May be qualified

Covenants

9. Limitations on the obligation to “fix” the antitrust concerns
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(c)—Qualification

Notwithstanding the immediately preceding sentence, “reasonable best efforts” shall not require Parent or its Subsidiaries to license, franchise, divest or hold separate any business locations or business lines of the Company, Parent or their respective Subsidiaries other than

- (i) Advantage and
- (ii) in addition to Advantage, business locations or business lines that produced aggregate gross revenues in an amount not in excess of \$175 million (“Divested Revenues”) for Parent, the Company and their respective Subsidiaries during the 2009 calendar year, calculated in accordance with GAAP, on a basis consistent with the accounting principles used in preparing their respective 2009 financial statements included in the Company SEC Reports or Parent SEC Reports, as applicable.

Covenants

9. Limitations on the obligation to “fix” the antitrust concerns
 - Example: 2010 Hertz/Dollar Thrifty § 6.03(c)—Qualification (con’t)

For the avoidance of doubt, in calculating Divested Revenues, only the business locations (or in the case of an entire business line, the business locations within such business line) for which a Divestiture Action is taken, shall be included. For example, if a Divestiture Action is required at an airport where the Parent and the Company each have a business location (or multiple business locations), only the business location at such airport that is divested shall be included in the calculation of Divested Revenues.

Covenants

10. Obligations not to make acquisitions that could impede the transaction

□ Example: 2010 Hertz/Dollar Thrifty § 6.03(d)

Neither the Company nor Parent shall, nor shall they permit their respective Subsidiaries to, acquire or agree to acquire any business, person or division thereof, or otherwise acquire or agree to acquire any assets, if, upon advice of such party's outside legal counsel, the entering into of a definitive agreement relating to or the consummation of such acquisition,

- (i) would reasonably be expected to delay or to increase the likelihood of not obtaining the applicable action, nonaction, waiver, clearance, consent or approval under the HSR Act or applicable requirements of the Competition Act in connection with the Merger and the other transactions contemplated hereby prior to the Termination Date or
- (ii) would reasonably be expected to require any action, nonaction, waiver, clearance, consent or approval of any Governmental Authority not listed on Section 7.01 of the Company Disclosure Schedule with respect to the transactions contemplated hereby.

Antitrust reverse termination fee

■ Basic idea

- Provides to the payment by the buyer to the seller of a fixed fee (or other value) in the event that the transaction does not close because of a failure of the antitrust conditions
 - Can be written as liquidated damages (or not)
 - May provide a carve-out for any willful and material breach
- May also provide for payment of transaction expenses
 - Example: Section 8.02(d)—Providing for DT's transaction expenses up to \$5 million

Antitrust reverse termination fee

- Standard provision

- Example: 2010 Hertz/Dollar Thrifty § 8.02(c)

In the event that

- (i) this Agreement has been terminated by either the Company or Parent pursuant to Section 8.01(b)(i), Section 8.01(b)(ii) or, as a result of a material breach under Section 6.03, [or] Section 8.01(d), and
- (ii) the condition set forth in the first sentence of Section 7.01(d), Section 7.01(f) (in the case of any Restraint arising out of any suit, action or proceeding brought by any person or Governmental Authority in respect of or under any Antitrust Law) or Section 7.02(d) has not been satisfied as of the date of such termination but all other conditions to Closing set forth in Section 7.01 and Section 7.02 shall otherwise have been satisfied (other than those conditions that by their nature are to be satisfied at Closing, but which conditions would have been satisfied if the Closing Date were the date of such termination), then . . .

Antitrust reverse termination fee

- Standard provision
 - Example: 2010 Hertz/Dollar Thrifty § 8.02(c) (con't)

then concurrently with such termination (in the case of a termination by Parent) or within three business days following such termination (in the case of a termination by the Company), Parent shall pay to the Company a fee equal to \$44,600,000 (the “Parent Termination Fee”) by wire transfer of immediately available funds to a bank account provided to Parent by the Company.

Antitrust reverse termination fee

- Carve-out for material breach
 - Example: 2010 Hertz/Dollar Thrifty § 8.03

Effect of Termination. In the event of termination of this Agreement by either the Company or Parent as provided in Section 8.01, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of Parent, Merger Sub or the Company [with listed exceptions],

provided that nothing herein (including the payment of any amounts under Section 8.02) shall relieve any party from any liability for any willful and material breach hereof prior to such termination. For purposes of this Agreement, “willful and material breach” shall mean a material breach that is a consequence of an act undertaken by the breaching party with the actual knowledge that the taking of such act would, or would be reasonably expected to, cause a material breach of this Agreement

Antitrust reverse termination fee

- Reimbursement of Seller's transaction expenses
 - Example: 2010 Hertz/Dollar Thrifty § 8.02(d)

In the event that a Parent Termination Fee is payable by Parent to the Company, Parent shall pay to the Company an amount equal to the sum of the Company's documented Transaction Expenses by wire transfer of immediately available funds to a bank account designated to Parent by the Company, as promptly as reasonably practicable (and, in any event, within three business days after the Company provides Parent with an invoice for such amount and related documentation); provided, that in no event shall Parent be required to reimburse the Company's Transaction Expenses in excess of \$5,000,000 in the aggregate

2012 Hertz/Dollar Thrifty deal

Contested Takeover Dance

April 26, 2010	Hertz to buy at \$1.2 billion
May 3, 2010	Avis sends letter to DT saying it will make a “superior offer”
May 13, 2010	Avis files HSR form for an open market purchase
May 14, 2010	Hertz files HSR form for April 26 deal
June 15, 2010	Avis receives a second request
July 28, 2010:	Avis offers \$1.33 billion (\$46.50 per share 80/20 cash/stock)
Aug. 3, 2010	DT rejects offer as “superior” because of <ul style="list-style-type: none">—Lack of deal certainty (no JDA → no exchange of AT analysis)—No antitrust reverse breakup fee
Aug. 31, 2010	Hertz releases comparative AT analysis <ul style="list-style-type: none">—Avis is 3 → 2 in mid-tier value brands—Avis closer in average rental price than Hertz to DT—Avis would require a much larger brand divestiture—Avis deal provides less contractual protection on AT risk (\$250m v. \$335m in U.S. HOHW revenue cap; no ARTF v. \$44.6m)

2012 Hertz/Dollar Thrifty deal

Contested Takeover Dance

Sept. 2, 2010	Avis raises bid to \$1.36 billion —Rejects significance of ARTF —Hertz has higher leisure revenue than Avis Budget (AAA)
Sept. 12, 2010	Hertz to \$1.56 billion (\$50/share)
Sept. 23, 2010	Avis raises bid to \$1.5 billion (\$52.71/share v. \$50.25/share)
Sept. 24, 2010	Hertz affirms bid is “best and final”
Sept. 27, 2010	DT rejects Avis bid and affirms recommendation for Hertz merger
Sept. 27, 2010	Avis announces it will launch a (hostile) exchange offer for DT —Asks that DT shareholder vote be delayed from 9/30 until 12/30
Sept. 29, 2010	Hertz announces it will terminate merger agreement if DT shareholders reject merger agreement
Sept. 30, 2010	DT shareholders rejects Hertz merger agreement
Sept. 30, 2010	Hertz announces it will terminate 2010 merger agreement
Sept. 30, 2010	Avis reaffirms commitment to acquire DT and pursue exchange offer

2012 Hertz/Dollar Thrifty deal

Contested Takeover Dance

Oct. 5, 2010	Avis and DT agree to cooperate in seeking regulatory approval
Jan. 11, 2011	FTC update—review continuing
May 9, 2011	Hertz offers \$2.1 billion (\$72/share 80/20) [ARTF ?]
May 12, 2011	Hertz and DT to cooperate in seeking regulatory approval
May 24, 2011	Hertz commences exchange offer for DT
June 6, 2011	DT recommends that shareholders take no action on either deal
July 14, 2011	Hertz files HSR form for exchange offer
Aug. 15, 2011	Hertz receives second request
Aug. 21, 2011	DT wants best and final offers by Oct. 10
Sept. 14, 2011	Avis pulls out of bidding
Oct. 10, 2011	No new proposals submitted by Hertz or Avis DT formally terminates solicitation process
Oct. 27, 2011	Hertz withdraws bid
Aug. 23, 2012	DT major shareholders say they would accept a \$2.4 billion bid
Aug. 27, 2012	Sign deal at \$2.3 billion

2012 Hertz/Dollar Thrifty deal

- Comparison with 2010 deal

	2010 Deal	2012 Deal
Total price	\$1.3 billion	\$2.3 billion
Price per share	\$41.00 (80/20)	\$87.50 cash
Deal structure	Rev. triangular	Tender offer*
Annual synergies	\$180 million	\$160 million
Termination date	12 months	4 months
HOHW cap	Advantage + ≤ \$175 m rev.	Advantage presold + undisclosed “Proposed Consent Agreement”
ARTF	\$44.6 million	None
Reimbursement of expenses	Up to \$5 million	Up to \$5 million

* Pursuant to Agreement and Plan of Merger between Hertz and Dollar Thrifty.

2012 deal premium

■ Parameters

- The going concern value V_c of DTAG appears to be \$1.4 billion
 - Hertz set the corporate enterprise of DTAG postmerger at \$2.3 billion, which equals 7.8x the midpoint of DTAG's EBITDA guidance for 2012 (\$298 million)
 - Hertz said the multiple represented a 40% premium over DTAG's premerger multiple
 - Discounting for the 40% premium gives a V_c of \$1.4 billion
 - Compares to \$932 million (after dividend) in 2010
- Hertz claimed an expected annually recurring synergy gain of \$160 million
 - Value as a 10-year annuity:

$$V_g = A \left[\frac{1 - (1 + r)^{-n}}{r} \right] = \$160 \text{ million} \left[\frac{1 - (1 + 0.07)^{-10}}{0.07} \right] = \$1.12 \text{ billion}$$

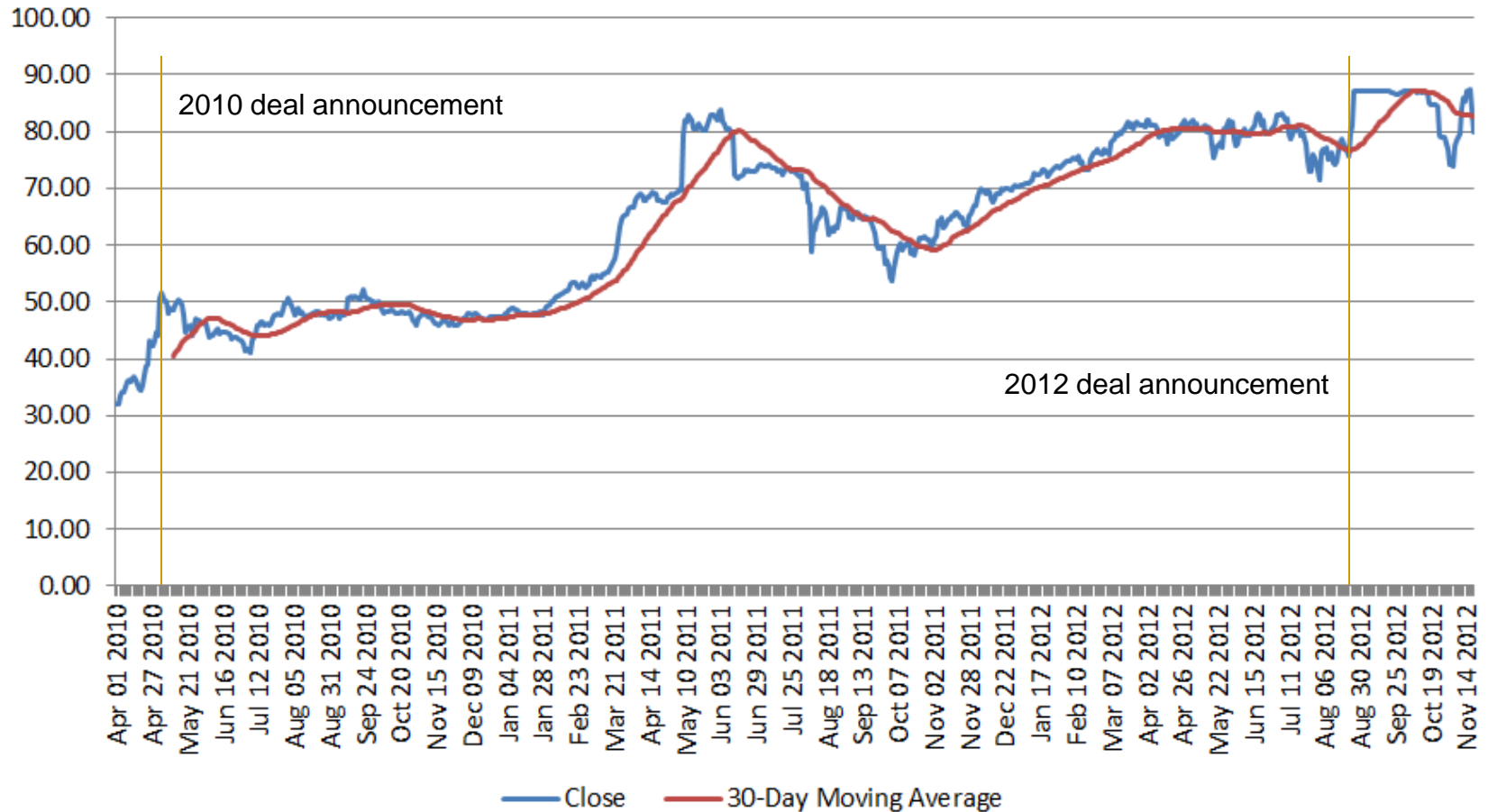
- So Hertz expects that the total value V_t of Dollar Thrifty postmerger will be:

$$\begin{aligned} V_t &= V_c + V_g = \$1.4 \text{ billion} + \$1.12 \text{ billion} \\ &= \$2.52 \text{ billion} \end{aligned}$$

Implies that Hertz gave up most of the synergies to DTAG shareholders *under our assumptions*

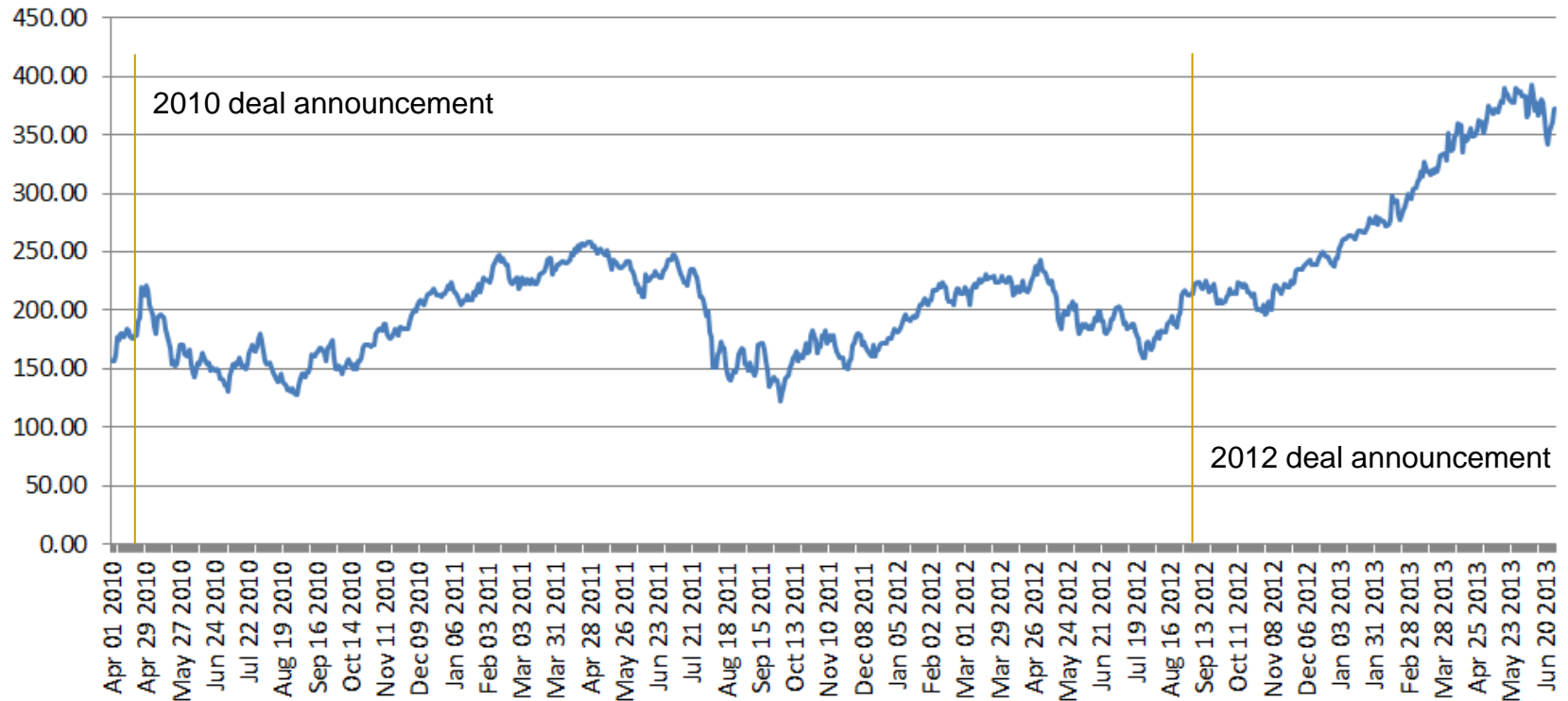
Dollar Thrifty stock prices

Dollar Thrifty Closing Prices April 1, 2010 — June 30, 2012



Hertz stock prices

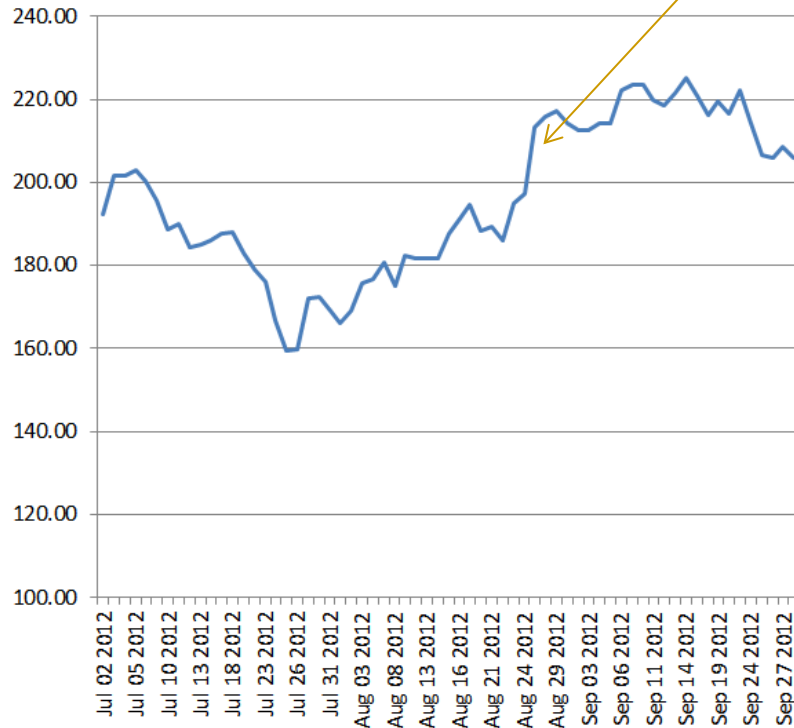
Hertz Closing Prices
April 1, 2010 — June 30, 2012



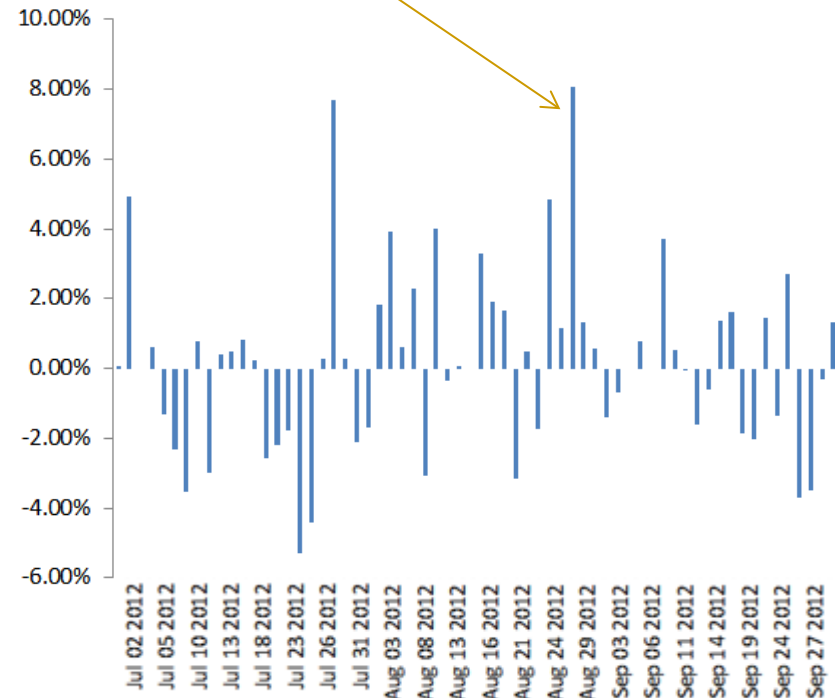
Hertz stock prices

Announcement: + 8.06%

Hertz Closing Prices
July 2, 2012 — Sept. 28, 2012



Hertz Closing Prices
Day-to-day percentage changes



The FTC Consent Order

FTC consent orders

■ Preliminaries

- An FTC order entered in an administrative litigation based on the consent of the Commission and the respondents
 - FTC consent orders are administrative “cease and desist orders”
- Violations are enforceable through federal district court action for civil penalties (and injunctive relief to prevent future violations)
 - Violations of orders entered under FTC Act § 5:
 - \$40,654 per day for every day of the violation
 - Equals over \$14.8 million per year
 - Violations of orders entered under Clayton Act § 7:
 - \$21,598 per day for every day of the violation
 - Equals over \$7.8 million per year

FTC consent order process

- Process
 - Negotiations with investigating staff
 - Draft consent order
 - Other necessary documents
 - Provisional acceptance by the Commission for public comment
 - Final approval by the Commission
- Conceptually similar process for DOJ Antitrust Division

FTC consent order process

- Negotiations with investigating staff
 - Can happen any time during the investigation
 - But staff will not enter into serious discussions until they are confident that they have identified the substantive problems
 - Typically, staff will discuss substantive concerns, but not propose remedies
 - Parties propose remedies
 - Staff reacts to acceptability, but typically does not counterpropose
 - Parties often fear “negotiating against themselves”
 - Staff and parties (often only the buyer) reach agreement in principle on substantive terms of a consent order
 - Staff in contact with “front office” of the Bureau of Competition throughout negotiations, so that staff and front office are aligned

FTC consent order process

- Draft Decision and Order (“consent order”)
 - Once an agreement in principle has been reached, staff drafts consent order
 - Parties often create their own draft using recent Commission consent orders for boilerplate for the client and to present to the staff
 - For settlement purposes only
 - No admission of liability or of any nonjurisdictional fact
 - Parties negotiate for changes
 - Staff open to discussing “small” changes in the remedy requirements
 - But staff strongly resists any changes to “boilerplate”

FTC consent order process

- Draft Decision and Order (“consent order”)
 - Typical form of consent
 - Definitions (including “Assets to be Divested”)
 - Divestiture obligation
 - Timing—Tends to be accelerated
 - 60 days from final approval in Albertsons/Safeway
 - 15 days to divest Advantage in Hertz Dollar Thrifty
 - Commission must approve divestiture buyer and divestiture agreement
 - Approval for preapproved divestiture buyers may be withdrawn
 - May require transition services agreements
 - Typically provides for recruitment of employees key to operation of divestiture business/assets

FTC consent order process

- Draft Decision and Order (“consent order”)
 - Typical form of consent
 - Divestiture obligation (con’t)
 - Purpose
 - to ensure the continuation of the Assets To Be Divested as ongoing viable enterprises engaged in the same business in which such assets were engaged at the time of the announcement of the acquisition
 - to ensure that the Assets To Be Divested are operated independently of, and in competition with, Respondent, and
 - to remedy the lessening of competition alleged in the Commission’s Complaint.
 - Divestiture Trustee provision
 - FTC may invoke if respondents fail to divest in the required time and manner
 - Boilerplate—Not negotiable
 - Monitor provision
 - FTC often appoints a monitor to supervise compliance

FTC consent order process

- Draft Decision and Order (“consent order”)
 - Typical form of consent
 - Prior notification provision
 - Requires respondent to notify non-HSR reportable transactions in the problematic areas as if they were HSR reportable
 - Used only when future problematic non-HSR reportable acquisitions are possible
 - Albertsons/Safeway has such a provision (Section VIII)
 - Compliance reporting obligations
 - Corporate structure change reporting obligations
 - Inspections
 - Termination provision
 - Policy: Consent orders terminate in 10 years or less from date the order is issued

FTC consent order process

- Other necessary documents
 1. Administrative complaint
 2. Agreement containing consent order
 3. Order to Maintain Assets
 4. Analysis of Agreement Containing Consent Order to Aid Public Comment

FTC consent order process

■ Other necessary documents

1. Administrative complaint

- A consent order is a settlement of an administrative litigation, so a complaint must be issued to initiate the litigation
- Staff will not show, much less negotiate, the contours of the complaint
 - But staff knows that the consent decree must remediate the allegations of competitive harm in the complaint
- Will allege the acquisition will violate—
 - FTC Act § 5, and
 - Clayton Act § 7

FTC consent order process

■ Other necessary documents

2. Agreement containing consent order

- This is the settlement agreement
- Covers a copy of the draft complaint and the proposed consent order
- Signatories
 - Respondents named in the complaint
 - Often only the buyer
 - Representatives of the Bureau of Competition
 - Investigating staff
 - Assistant director of the investigating section
 - Assistant director of Compliance
 - Sometimes others
 - Seller (if not a respondent)
 - Divestiture buyers

FTC consent order process

■ Other necessary documents

2. Agreement containing consent order

- Some provisions
 - Respondents admit all jurisdictional facts
 - Consent order for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint
 - Acknowledges that the Commission may withdraw from the consent settlement—
 - Without provisionally accepting it
 - After provisional acceptance but before final approval
 - Respondent represent that—
 - They can accomplish the full relief required by the draft consent order
 - Parents and affiliates are bound as if they signed the order
 - Consent order to be interpreted in light of its remedial purposes
 - Respondents agree to comply with the consent order (and any hold separate order) from date of signing forward

FTC consent order process

■ Other necessary documents

3. Order to Maintain Assets

- Entered upon provisional acceptance of consent order
- Imposes obligations on Respondents:
 - To “maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of the Assets To Be Divested”
 - Not to “sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Assets To Be Divested”
 - To operate the Assets To Be Divested in the ordinary course of business
 - To “use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the ordinary course of business and in accordance with past practice”
- Monitor provisions
- Reporting provisions
- Inspection provisions
- NB: May also include a “hold separate” provision

FTC consent order process

- Other necessary documents

- 4. Analysis of Agreement Containing Consent Order to Aid Public Comment

- Contents

- Introduction and background
 - Description of the respondents
 - Background on the industry and competitive analysis
 - Description of the proposed consent order

- To be published in the Federal Register

- Also on FTC web site

- Not provided to the merging parties prior to release

FTC consent order process

- Provisional acceptance by the Commission
 - Commission must vote on whether to accept Agreement Containing Consent Order for public comment
 - Action requires a majority vote by the FTC commissioners
 - Acceptance for public comment carries no legal commitment to finally accept consent order
 - BUT I am not aware of any instance where the Commission has failed to finally accept a consent order released for public comment (although the order may be modified)
 - 30-day public comment period starts with the publication of the Analysis of Agreement Containing Consent Order in the Federal Register
 - Typically, no comments are submitted
 - FTC has already talked to interested parties
 - Closing of main transaction
 - NB: Commission practice is to allow the main transaction to close immediately upon provisional acceptance

FTC consent order process

- Final acceptance by the Commission
 - Following close of public comment period, Commission must vote on whether to issue Decision and Order in final
 - Action requires a majority vote by the FTC commissioners
 - No rush
 - Main transaction has already closed
 - Respondents committed in the Agreement Containing Consent Order to comply with the consent order as if it had been entered
 - Order to Maintain Assets preserves assets and businesses
 - But divestitures may not yet have been consummated
 - Commissioners almost always vote for final acceptance of originally proposed consent order
 - Occasionally, there will be a modification—often at the request of the merging parties or the divestiture buyers
 - *Query*: Can the Commission enter a modified consent order over the objection of a respondent (i.e., when the respondent does not consent)?

FTC Complaint

- Issued November 15, 2012
 - Eight-month investigation
- Relevant markets
 - Product market: Airport car rentals
 - Alternative: Non-contracted airport car rentals (excludes rentals made at prenegotiated rates and terms)
 - Geographic markets: 72 airports
- Competitive effects
 - Eliminates direct competition between parties (all markets)
 - Eliminates future competition between parties (several markets)
 - Increases likelihood of unilateral exercise of market power by Hertz
 - Increases likelihood of coordinated interaction
 - Increases likelihood that customers will pay higher prices

FTC Complaint

- No ease of entry—Need:
 - On-airport concession locations
 - Recognized brand
 - Relationships with online travel agencies and other distribution channels
 - Sufficient size to achieve economies of scale
- Violations
 - Acquisition, if consummated, would violate Clayton Act § 7 and FTC Act § 5
 - Acquisition agreement violates FTC Act § 5

FTC Consent Order

- Agreement containing consent order(s)
 - Negotiated and signed by parties prior to Commission vote
 - Parties
 - Hertz Global Holdings, Inc.—merging party
 - Franchise Services of North America Inc. (FSNA) (operates U-Save rental business)—divestiture buyer
 - Macquarie—providing financing for divestiture buyer

FTC Consent Order

- Proposed consent order: Hertz to divest—
 - Its Advantage Rent-a-Car business + 16 Dollar Thrifty on-airport locations where Advantage does not yet operate to FNSA/Macquarie jv
 - Advantage: 15 days after the Effective Date or December 12, 2012, whichever is later
 - DT assets: 90 days after the Effective Date
 - Purchase price: \$16 million—1/2 of what Hertz paid to acquire Advantage out of bankruptcy in 2009
 - 13 Dollar Thrifty on-airport locations to FNSA/Macquarie jv or another Commission-approved buyer (post-acquisition)
 - 60 days after signing of Agreement to submit signed divestiture agreement
 - 6 months after the Effective Date to divest
- Hold to maintain assets
 - Contrast with Hold Separate Order

FTC Consent Order

- Commission vote to provisionally accept consent order
 - 4-1, with Rosch dissenting from acceptance of consent order (insufficient as relief at several dozen airports)
- Subsequent events
 - November 26, 2012: Federal Register notice published to begin comment period
 - 30 days for the FTC under Commission rules
 - 60 days for the DOJ under the Tunney Act
 - December 17, 2012: Comment period ends
 - Six comments received
 - July 11, 2013: Final Commission acceptance
 - 3-0-1, with Rosch dissenting and Wright not participating

Aftermath

- Divestiture arrangement and leasing risk
 - JV buyer to lease 24,000 vehicles from Hertz and bear the residual value risk
 - When JV began to turn over fleet, experienced significant losses
 - October 25, 2013: JV had lost \$8.6 million
- Deal falls apart
 - October 2, 2013: JV missed scheduled payment to Hertz
 - November 2, 2013
 - Refinancing negotiations fail
 - Hertz terminates Master Lease Agreement and seeks return of all leased vehicles
 - November 5, 2013: JV seeks bankruptcy protection

Aftermath

■ Subsequent transactions

- January 30, 2014: FTC grants FSNA's petition FTC to sell Advantage to Catalyst Capital Group (winning bidder in bankruptcy auction—40 locations, excluded 28))
- May 30, 2014: FTC grants FNSA's petition to sell 22 former Advantage locations to Hertz (10) and Avis (12)
- September 5, 2014: FTC grants FNSA's petition to sell Portland location to Avis and San Jose locations to Sixt Rent-A-Car

PARKER-HANNIFIN/CLARCOR

Parker-Hannifin/Clarcor

■ Timeline

Dec. 1, 2016	Announce merger agreement
Jan. 17, 2017	HSR Act waiting period expires
Feb. 28, 2017	Merger is completed
Sept. 26, 2017	DOJ challenges transaction