

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

<p>In the Matter of:</p> <p>Hertz Global Holdings, Inc., a corporation</p>	<p>Docket No. C-4376</p>

**ORDER TO MAINTAIN ASSETS
[Redacted Public Version]**

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Hertz Global Holdings, Inc. ("Hertz" referred to hereafter as "Respondent Hertz") of Dollar Thrifty Automotive Group, Inc. ("DTAG"), and Respondent Hertz having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Hertz with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent Hertz, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondent Hertz of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Hertz that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondent Hertz has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Maintain Assets:

1. Respondent Hertz is a corporation organized, existing and doing business under the laws of the State of Delaware with its office and principal place of business located at 225 Brae Boulevard, Park Ridge, NJ 07656 - 1888.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Hertz, and the proceeding is in the public interest.

I. ORDER

IT IS ORDERED that all capitalized terms used in this Order to Maintain Assets, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order contained in the Consent Agreement. In addition to the definitions in Paragraph I of the Decision and Order attached to the Agreement Containing Consent Orders, the following definitions shall apply:

- A. "Acquisition" means the acquisition of DTAG by Hertz.
- B. "Decision and Order" means:
 1. the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. the Final Decision and Order issued and served by the Commission.
- C. "Divestiture Date" means the earliest date on which the divestiture of the Advantage Assets To Be Divested required by the Decision and Order has been completed.
- D. "Monitor" means any monitor appointed pursuant to Paragraph VI of this Hold Separate Order.
- E. "Orders" means the Decision and Order and this Order to Maintain Assets.

II. (Advantage Asset Maintenance)

IT IS FURTHER ORDERED that:

- A. From the date Respondent Hertz signs the Consent Agreement until the Divestiture Date, Respondent Hertz shall:
1. Maintain in a manner consistent with the Purchase Agreement each of the Advantage Assets To Be Divested in substantially the same condition (except for normal wear and tear) existing at the time Respondent Hertz signs the Consent Agreement;
 2. Take such actions that are consistent with the past practices of Respondent Hertz in connection with each of the Advantage Assets To Be Divested and that are taken in the Ordinary Course Of Business and in the normal day-to-day operations of Respondent Hertz;
 3. Keep available the services of the current officers, employees, and agents of Respondent Hertz necessary for the operation of the Advantage Assets To Be Divested; and maintain the relations and good will with, as applicable, Airport Authorities, Suppliers, customers, landlords, employees, agents, and others having business relations with the Advantage Assets To Be Divested with them in the Ordinary Course Of Business;
 4. Preserve in a manner consistent with the Purchase Agreement the Advantage Assets To Be Divested as ongoing businesses and not take any affirmative action, or fail to take any action within Respondent Hertz's control, as a result of which the viability, competitiveness, and marketability of the Advantage Assets To Be Divested would be diminished.
- B. From the date Respondent Hertz signs the Consent Agreement until the Divestiture Date, Respondent Hertz shall:
1. Not object to the sharing with the applicable Acquirer the Supplier contract terms necessary to the Operation of a Car Rental Facility: (i) if the Supplier consents in writing to such disclosure upon a request by the applicable Acquirer, and (ii) if such Acquirer enters into a confidentiality agreement with Respondent Hertz not to disclose the information to any third party; and

2. Cooperate with the applicable Acquirer and assist such Acquirer, at no cost to such Acquirer and for each Advantage Airport Concession to be divested, in obtaining all Airport Authority Approvals required for the Operation Of The Airport Concessions.
- C. The purposes of this Paragraph II are to: (1) preserve the Advantage Assets To Be Divested as viable, competitive, and ongoing businesses until the divestitures required by the Decision and Order are achieved; (2) prevent interim harm to competition pending the relevant divestitures and other relief; and (3) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

III. (DTAG Asset Maintenance)

IT IS FURTHER ORDERED that:

- A. For each of the DTAG Assets To Be Divested, from the Effective Date until the date each such asset is divested, Respondent Hertz shall:
1. Maintain in a manner consistent with the Purchase Agreement each of the DTAG Assets To Be Divested in substantially the same condition (except for normal wear and tear) existing at the Effective Date;
 2. Take such actions in connection with each of the DTAG Assets To Be Divested that are consistent with those taken in the Ordinary Course Of Business and in the normal day-to-day operations of Respondent Hertz;
 3. Keep available the services of the current officers, employees, and agents of DTAG necessary for the operation of the DTAG Assets To Be Divested; and maintain the relations and good will with, as applicable, Airport Authorities, Suppliers, customers, landlords, employees, agents, and others having business relations with the DTAG Assets To Be Divested with them in the Ordinary Course Of Business;
 4. Preserve in a manner consistent with the Purchase Agreement the DTAG Assets To Be Divested as ongoing businesses and not take any affirmative action, or fail to take any action within Respondent Hertz's control, as a result of which the viability, competitiveness, and marketability of the DTAG Assets To Be Divested would be diminished.
- B. From the Effective Date until the applicable Time of Divestiture, Respondent Hertz shall:

1. Not object to the sharing with the applicable Acquirer the Supplier contract terms necessary to the Operation of a Car Rental Facility: (i) if the Supplier consents in writing to such disclosure upon a request by the applicable Acquirer, and (ii) if such Acquirer enters into a confidentiality agreement with Respondent Hertz not to disclose the information to any third party; and
 2. Cooperate with the applicable Acquirer and assist such Acquirer, at no cost to such Acquirer and for each DTAG Airport Concession to be divested, in obtaining all Airport Authority Approvals required for the Operation Of The Airport Concessions.
- C. The purposes of this Paragraph III are to: (1) preserve the DTAG Assets To Be Divested as viable, competitive, and ongoing businesses until the divestitures required by the Decision and Order are achieved; (2) prevent interim harm to competition pending the relevant divestitures and other relief; and (3) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

IV. (Additional Asset Maintenance)

IT IS FURTHER ORDERED that:

- A. For each of the Additional Assets To Be Divested, from the Effective Date until each such asset is divested, Respondent Hertz shall:
1. Maintain in a manner consistent with the applicable Divestiture Agreement each of the Additional Assets To Be Divested in substantially the same condition (except for normal wear and tear) existing at the Effective Date;
 2. Take such actions that are consistent with the past practices of Respondent Hertz in connection with each of the Additional Assets To Be Divested and that are taken in the Ordinary Course of Business and in the normal day-to-day operations of Respondent Hertz;
 3. Keep available the services of the current officers, employees, and agents of the Additional Assets To Be Divested necessary for the operation of the Additional Assets To Be Divested; and maintain the relations and good will with, as applicable, Airport Authorities, Suppliers, customers, landlords, employees, agents, and others having business relations with the Additional Assets To Be Divested with them in the Ordinary Course Of Business; and

4. Preserve in a manner consistent with the applicable Divestiture Agreement, if any, the Additional Assets To Be Divested and not take any affirmative action, or fail to take any action within Respondent Hertz's control, as a result of which the viability, competitiveness, and marketability of the Additional Assets To Be Divested would be diminished.
- B. From the Effective Date until the applicable Time of Divestiture, Respondent Hertz shall:
1. Not object to the sharing with the applicable Acquirer the Supplier contract terms necessary to the Operation of a Car Rental Facility: (i) if the Supplier consents in writing to such disclosure upon a request by such Acquirer, and (ii) if such Acquirer enters into a confidentiality agreement with Respondent Hertz not to disclose the information to any third party; and
 2. Cooperate with the applicable Acquirer and assist such Acquirer, at no cost to such Acquirer and for all Additional Assets To Be Divested to be divested, in obtaining all Airport Authority Approvals required for the Operation Of The Airport Concessions.
- C. The purposes of this Paragraph IV are to: (i) preserve the Additional Assets To Be Divested until the divestitures required by the Decision and Order are achieved; (2) prevent interim harm to competition pending the relevant divestitures and other relief; and (3) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

V. (Divestiture Requirements)

IT IS FURTHER ORDERED that at the Time Of Divestiture of each Appendix A Airport Concession or, if required, each Substitute Airport Concession required to be divested in lieu of such Appendix A Airport Concession, Respondent Hertz shall assign to the applicable Acquirer all rights, title, and interest to that Airport Concession, and shall obtain all necessary Airport Authority Approvals, subject to Paragraph II of the Decision and Order; *provided, however*, that (1) if such Acquirer obtains all rights, title, and interest to an Appendix A Airport Concession, or a Substitute Airport Concession, before the Advantage Assets To Be Divested are divested pursuant to Paragraph II.A.2 of the Decision and Order, and (2) such Acquirer certifies its receipt of such Airport Authority Approval and attaches it as part of the Divestiture Agreement, then Respondent Hertz shall not be required to make the assignments for such Airport Concessions as required by this Paragraph.

VI. (Facilitate Hiring)

IT IS FURTHER ORDERED that, with regard to Advantage Employees, from the time Respondent Hertz signs the Consent Agreement and, with regard to DTAG Employees, from the Effective Date until sixty (60) days after the Time Of Divestiture of each Car Rental Facility, including any Substitute Airport Concession designated by the Commission in lieu of any such Car Rental Facility, whichever is later:

- A. Respondent Hertz shall, if requested by the applicable Acquirer, facilitate interviews between each Employee and such Acquirer, and shall not discourage such Employee from participating in such interviews;
- B. Respondent Hertz shall not interfere in employment negotiations between any Employee and the applicable Acquirer;
- C. Respondent Hertz shall not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict any Employee from being employed by the applicable Acquirer, and shall not offer any incentive to any such Employee to decline employment with such Acquirer;
- D. Respondent Hertz shall cooperate with the applicable Acquirer in effecting transfer of the Employee to the employ of such Acquirer, if that Employee accepts such offer of employment from such Acquirer;
- E. Respondent Hertz shall eliminate any contractual provisions or other restrictions that would otherwise prevent the Employee from being employed by the applicable Acquirer;
- F. Respondent Hertz shall eliminate or waive any confidentiality restrictions of Respondent Hertz that would prevent the Employee who accepts employment with the applicable Acquirer from using or transferring to such Acquirer any information Relating To the Operation Of The Car Rental Facility; and
- G. Respondent Hertz shall pay, for the benefit of any Employee who accepts employment with the applicable Acquirer, all accrued bonuses, vested pensions and other accrued benefits consistent with the terms of any applicable benefit plans except to the extent assumed by such Acquirer under the applicable Divestiture Agreements.

VII. (Monitor)

IT IS FURTHER ORDERED that:

- A. Roger Ballou shall be appointed Monitor to assure that Respondent Hertz expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order to Maintain Assets and the Decision and Order.
- B. No later than one (1) day after the Effective Date, Respondent Hertz shall, pursuant to the Monitor Agreement, attached as Appendix A and Confidential Appendix A-1, and to this Order to Maintain Assets, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform its duties and responsibilities in a manner consistent with the purposes of this Order to Maintain Assets.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondent Hertz, which consent shall not be unreasonably withheld. If Respondent Hertz has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Hertz of the identity of any proposed Monitor, Respondent Hertz shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondent Hertz shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Hertz's compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements in a manner consistent with the purposes of this Order to Maintain Assets and the Decision and Order.
- D. Respondent Hertz shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 1. The Monitor shall have the power and authority to monitor Respondent Hertz's compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondent Hertz expeditiously complies with all of its obligations and performs all of its responsibilities as required by

this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements;

- b. Monitoring any transition services agreements; and
 - c. Assuring that Confidential Business Information is not received or used by Respondent Hertz or the applicable Acquirer, except as allowed in the Decision and Order, in this matter.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor shall serve for such time as is necessary to monitor Respondent Hertz's compliance with the provisions of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements.
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Hertz's personnel, books, documents, records kept in the Ordinary Course Of Business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Hertz's compliance with its obligations under this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements. Respondent Hertz shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Hertz's compliance with this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements.
 5. The Monitor shall serve, without bond or other security, at the expense of Respondent Hertz on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Hertz, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
 6. Respondent Hertz shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from

misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.

7. Respondent Hertz shall report to the Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondent Hertz, and any reports submitted by the applicable Acquirer with respect to the performance of Respondent Hertz's obligations under this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements.
 8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondent Hertz of its obligations under this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements.
 9. Respondent Hertz may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor's duties.
 - F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph VII.
 - G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreements.
 - H. The Monitor appointed pursuant to this Order may be the same Person appointed as Monitor or Divestiture Trustee under the Decision and Order.

VIII. (Compliance Reports)

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets becomes final, and every sixty (60) days thereafter until the Order to Maintain Assets terminates, Respondent Hertz shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets shall be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent Hertz pursuant to the Decision and Order.

IX. (Change in Hertz)

IT IS FURTHER ORDERED that Respondent Hertz shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent Hertz,
- B. Any proposed acquisition, merger or consolidation of Respondent Hertz, other than the acquisition of the DTAG shares or any merger of Respondent Hertz and DTAG, or
- C. Any other change in Respondent Hertz that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Hertz.

X. (Access)

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent Hertz, Hertz shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Hertz and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondent Hertz related to compliance with this Order, which copying services shall be provided by Respondent Hertz at the request of the authorized representative(s) of the Commission and at the expense of Respondent Hertz; and

- B. Upon five (5) days' notice to Hertz and without restraint or interference from Hertz, to interview officers, directors, or employees of Hertz, who may have counsel present, regarding such matters.

XI. (Termination)

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The latter of:
 - 1. the day after the Divestiture Date; or
 - 2. the day after the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission, Commissioner Rosch dissenting.

Donald S. Clark
Secretary

SEAL

ISSUED: November 15, 2012

APPENDIX A
MONITOR AGREEMENT

CONFIDENTIAL APPENDIX A-1

MONITOR COMPENSATION

[Redacted From the Public Record Version, But Incorporated By Reference]