

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

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

**PETITION OF FRANCHISE SERVICES OF NORTH AMERICA, INC. FOR  
PRIOR APPROVAL OF THE SALE OF  
SIMPLY WHEELZ D/B/A ADVANTAGE**

Pursuant to Section 2.41(f) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph V of the Commission’s Decision and Order In the Matter of Hertz Global Holdings, Inc., (respectively “Hertz” and the “Order”) (Dkt. No. C-4376), Franchise Services of North America, Inc. (“FSNA”) respectfully requests that the Commission approve the sale and assignment to The Catalyst Capital Group Inc. on behalf of one or more funds managed by it and/or through certain affiliates or any designee thereof (“Catalyst”) of certain of the assets and liabilities relating to the business of Simply Wheelz LLC d/b/a Advantage Rent A Car (“Simply Wheelz,” the “Debtor” or the “Company”, and the sale transaction, the “Advantage/Catalyst Sale” and the assets to be purchased, the “Advantage Assets”) pursuant to the terms of the Purchase Agreement (as defined below). Through a series of FTC-approved transactions, FSNA acquired the Assets To Be Divested (as defined in the Order),<sup>1</sup> and through its direct subsidiary, Simply Wheelz, has been operating a car rental business under the “Advantage” brand (the “Advantage Business”). Under the terms of Paragraph V of that Order, the Acquirer of Assets To Be Divested, in this case FSNA, must obtain prior approval from the FTC before disposing of any of those assets.

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<sup>1</sup> This Application adopts and incorporates by reference all Definitions set forth in the Order.

**EXECUTIVE SUMMARY**

FSNA acquired the Assets To Be Divested in order to operate a successful rental car business through its subsidiary, Simply Wheelz. However, following the closing of this transaction, Simply Wheelz experienced a series of commercial and operational setbacks and as a result, the Company and its advisors commenced a process to attract the capital necessary to address these challenges. Catalyst participated in this process and ultimately reached an agreement in principle with FSNA and Simply Wheelz to recapitalize the business and, subject to Hertz's consent, to resolve all outstanding Hertz-related issues, all without the need for a bankruptcy. However, before the Company could accomplish this out-of-court recapitalization, Hertz claimed to exercise its right under the Order to terminate its entire fleet leasing arrangement with Simply Wheelz. Facing the imminent loss of its fleet, Simply Wheelz was forced to file for bankruptcy pursuant to chapter 11 of the Bankruptcy Code on November 5, 2013 in the United States Bankruptcy Court for the Southern District of Mississippi (the "Bankruptcy Court"). To stave off a liquidation, Simply Wheelz turned to Catalyst to make a "stalking horse" bid for the Advantage Business and to provide it an immediate \$46 million debtor-in-possession ("DIP") facility that would enable the Company to survive until the closing of the sale.

An auction for the Advantage Assets took place on December 9, 2013, pursuant to bidding procedures approved by the Bankruptcy Court. At the auction, Catalyst submitted an improved bid that was higher and better than the one submitted by the only other competing bidder, Sixt SE (through its subsidiary Sixt Rent-A-Car, LLC ("Sixt")). Sixt declined to bid any further, and Catalyst was determined to be the winning bidder. Sixt objected to the selection of Catalyst as the auction winner on various grounds – including that (1) Sixt was unfairly denied access to certain information (including the status and terms of the Hertz settlement) and (2)

Catalyst acted inappropriately in advising Simply Wheelz that it would discontinue its DIP financing (based on existing events of default) at the conclusion of the auction if Sixt prevailed at the auction and consequently that Sixt should be prepared to modify its bid to provide the same pre-closing DIP financing that Catalyst had committed to provide were it selected as the winning bidder. In truth, Sixt was given equal opportunity to provide financing to Simply Wheelz on the same terms and conditions as Catalyst but was unwilling to do so, and Sixt was offered the opportunity to meet with Hertz representatives (in the presence of Company representatives), but refrained from doing so. On December 17, 2013, after an extensive evidentiary hearing (the “Sale Hearing”), the Bankruptcy Court ruled from the bench (due to the exigencies of timing) and overruled Sixt’s objection both on its merits and for lack of standing, and approved the Advantage/Catalyst Sale, declaring it be in the best interests of Simply Wheelz and its creditors. At the Sale Hearing, the Bankruptcy Court also approved a global settlement with Hertz (as defined below, the “Hertz Settlement”). This Hertz Settlement satisfies an important condition precedent to the Advantage/Catalyst Sale, but it also imposes an accelerated timeline for returning the Hertz fleet and consummating the sale.

Of the remaining conditions precedent, obtaining the FTC’s approval under the Order is the most pressing.<sup>2</sup> FSNA is mindful of the FTC’s settlement with Hertz in connection with

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<sup>2</sup> FSNA, Simply Wheelz and Catalyst are confident that all other conditions precedent to closing can be satisfied very quickly and hence obtaining FTC consent to the Advantage/Catalyst Sale is the gating condition precedent. The other conditions precedent include: (i) the obtaining of all airport authority and other third party consents necessary to convey specified airport concessions and online travel agency (“OTA”) agreements, (ii) the absence of a Material Adverse Effect (as defined in the Purchase Agreement) with respect to the Advantage Business, and (iii) that Catalyst has obtained all of the Company’s permits, to the extent transferrable, necessary for Catalyst to conduct the Advantage Business in the ordinary course of business immediately following the Closing. Importantly, most airport authorities opted not to object to the Advantage/Catalyst Sale, and of the very small handful who did, their objections largely related to the calculation of the payments required to cure monetary defaults under their concession agreements – objections that have been or soon will be consensually resolved. Only five airport authorities objected to the sale on the grounds that their consent was required for the transfer of the

Hertz's acquisition of Dollar Thrifty Automotive Group, Inc. ("DTAG"). That settlement obligated Hertz to divest all of its Advantage Assets and additional DTAG assets sufficient to establish a meaningful footprint of on-airport car rental facilities, which divestiture formed the cornerstone of the Order and was expressly designed to create a viable and vigorous rental car company, capable of competing over the long term, and in particular with Hertz/DTAG, Enterprise and Avis. Although FSNA was unable to operate this set of assets effectively due to unforeseeable circumstances, it strongly believes that a well-capitalized Advantage Business, under the ownership of a premier private equity firm which specializes in operational turnarounds, will not only preserve the going concern value of the Advantage Business but will foster the very robust and long-lived competition envisioned by the FTC.

Catalyst is an eminently qualified owner and operator of the Advantage Business. Catalyst is one of the largest Canadian private equity firms with over \$3 billion of long term committed capital under management, and has a proven track record of acquiring distressed businesses and successfully turning them around. Several of those businesses are leading competitors in their fields today. For example, leading trucking company YRC Worldwide had a negative EBITDA of \$567 million and narrowly avoided bankruptcy when Catalyst led its out-of-court restructuring. As a result of Catalyst's restructuring and financing efforts, which included leading YRC's steering committee, management team search and exit financing, YRC now boasts a positive EBITDA of \$230 million. Catalyst's financial/operating model differs substantially from the FSNA/Macquarie model in respects that should convey confidence to the FTC in approving it as a buyer of the applicable Advantage Assets.

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concession agreements and that they needed more information about the winning bidder before they could make their decision. Catalyst is in the process of providing information to those airport authorities, and is very confident that those airport authorities will readily consent once they fully appreciate Catalyst's commitment to the Advantage Business.

Catalyst has outlined a compelling strategic plan for its acquisition of the Advantage Business – a plan that includes (i) infusing substantial additional capital (in excess of \$100 million, including its DIP financing) to fund operations, capital expenditures and the acquisition of a new fleet of rental vehicles independent of Hertz, (ii) tightening financial and management controls, (iii) supplementing senior management, (iv) selecting profitable airport concessions and markets in which to operate, and (v) eventually, obtaining the airport concessions in key rental markets, including New York City, Newark, New Jersey, and Baltimore, Maryland.

Moreover, even prior to closing, Catalyst has made very substantial financial commitments to the resuscitation of the Advantage Business. From the very outset of the bankruptcy, and without meaningful collateral protection, Catalyst has been providing a \$46 million DIP facility to fund all aspects of the Advantage Business. That commitment will likely further increase given the urgent need to replace the Hertz vehicles that Simply Wheelz is returning to Hertz pursuant to the Hertz Settlement. In addition, Catalyst, at great expense, has deployed its own in-house and outside professionals to assist the Company in revamping its financial and operating systems and controls, and equally important, its strategic business plan.

Expedited approval by the FTC is essential to preserving the opportunity to create a viable competitor. Since its filing, Simply Wheelz has experienced accelerating operating losses, partly because of the heightened costs associated with the bankruptcy process and partly because of declining revenue and other operating metrics. In addition, Simply Wheelz desperately requires hundreds of millions of dollars of new fleet financing to replace the Hertz fleet (as required by the Hertz Settlement), and such financing is far more expensive in bankruptcy than outside of a proceeding. Catalyst cannot be expected to substantially increase its financing commitment if there are delays in obtaining FTC consent. Termination or exhaustion of the

Catalyst DIP facility would be the death knell of the Advantage Business. Expedited FTC approval, on the other hand, will avoid the risk of liquidation, accelerate the implementation of Catalyst's turnaround plans and allow Catalyst to devote a greater portion of its committed capital to fund those turnaround initiatives. In addition, it will enable Catalyst to begin negotiating concessions with airports (most notably, Newark, JFK, LaGuardia, and Baltimore-Washington airports) which have been understandably cautious about negotiating while the Advantage Business is mired in bankruptcy.

### **Request for Confidential Treatment**

This petition contains highly confidential and competitively sensitive commercial material. The disclosure of this confidential information would be likely to harm the business interests of FSNA, Simply Wheelz, and/or Catalyst and would likely contravene the Commission's stated interest in preserving the competitive potential of the assets subject to its order. Therefore, both FSNA and Catalyst respectfully request that the confidential information contained in this petition not be disclosed to the public and that this petition be accorded confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice, 16 C.F.R. § 4.10(A)(2). For the purpose of obtaining public comment relating to this petition, FSNA has created, and is filing with this petition, a public version by redacting confidential information.

### **Description of the Bankruptcy Case and Proposed Transaction**

**Bankruptcy Case and Related Events:** The first closing of FSNA's acquisition of the Advantage Business occurred in December 2012. In the ensuing months, Simply Wheelz experienced severe financial and operational difficulties that, in hindsight, had multiple causes: the inadequacy of its capitalization, the inherent unprofitability of a number of its car rental locations, the now-apparent uneconomic terms of its fleet leasing arrangement with Hertz, its

inability to access fleet financing to replace the Hertz fleet over time, and the lack of a centralized headquarters for its senior management team. Adreca Holdings Corp., a significant shareholder of FSNA and an affiliate of Macquarie Capital, was unwilling to make the additional investments necessary to resolve these problems. As a result, FSNA and Simply Wheelz, with the assistance of its financial advisor, Capstone Advisory Group, commenced an M&A process to sell or recapitalize the Advantage Business.

Following discussions with various interested parties, in early November, 2013, FSNA and Simply Wheelz reached an agreement in principle with Catalyst on the terms of an out-of-court recapitalization that would have revitalized the Advantage Business without the trauma of a bankruptcy. This recapitalization was subject to a consensual resolution of a variety of Hertz-related issues. Unfortunately, Hertz was unwilling to agree to any such settlement, and instead responded by claiming to exercise its right under the Order to terminate its entire fleet leasing arrangement with Simply Wheelz. As a result, on November 5, 2013, Simply Wheelz was forced to file a petition in the Bankruptcy Court seeking relief under chapter 11 of the United States Bankruptcy Code.

At the time of its filing, Simply Wheelz lacked the liquidity to continue to operate as a going concern, and was on the verge of liquidation. Of all the <sup>REDACTED</sup> prospective purchasers and/or financing sources contacted by Simply Wheelz in its time of need, Catalyst was the only one willing to step up and make a “stalking horse” bid for the Advantage business and effectively pre-fund its purchase price by providing debtor-in-possession (“DIP”) financing in the amount of up to \$46 million (the “DIP Facility”) to enable the Company to survive until the closing (which DIP indebtedness would then be credit bid as a portion of the purchase price).

On November 22, 2013, the Bankruptcy Court entered an order approving Catalyst as the stalking horse bidder and establishing an auction process for the sale of the Advantage Business to whichever qualified bidder made the highest or otherwise best offer for the business. Sixt was the only other party that submitted a bid deemed to be a qualified bid.

At the auction held on December 9, 2013, Catalyst countered with a topping bid that provided greater certainty and speed of closing by, among other things, eliminating certain material closing conditions and scaling back certain representations and warranties (all of which remained in the Sixt bid) and, most importantly, by agreeing to waive existing events of default under its DIP Facility and to provide a *substantial increase in committed DIP financing* based on a revised DIP financing budget that, together with the Debtor's fleet financing needs (which the Catalyst bid also committed to fund), would fully utilize all of the existing \$46 million DIP Facility and enable the Company to survive through closing.

Simply Wheelz and its advisors concluded that this improved Catalyst bid was a qualified overbid that offered greater value than the Sixt bid. Specifically, the Sixt bid was inferior because it *failed to include any committed financing* that would enable the Debtor to survive until the closing and because it included closing contingencies not found in the Catalyst bid (e.g., the imposition of an unspecified "Operating Budget" condition and a disguised due diligence closing condition that purported to allow Sixt to terminate its purchase agreement "in its sole discretion" if the Debtor failed to deliver a schedule of assets acceptable to Sixt). From the Debtor's perspective, Sixt, at the very least, needed to commit to provide replacement DIP financing; it could not predicate its bid on continued DIP financing from Catalyst, as that financing was in default and Catalyst was unwilling to continue to fund the Company's mounting

operating losses while it pursued what Catalyst believed to be an illusory, highly contingent sale transaction.

After announcing that Catalyst had submitted a qualified overbid, Simply Wheelz then gave Sixt the opportunity to meet with its senior management and advisors to explore ways to top Catalyst's overbid, including, most importantly, a pre-closing DIP financing commitment. Sixt was also given the opportunity to meet with Hertz representatives (in the presence of Company representatives) to discuss the status of the parties' ongoing negotiations concerning a global settlement of Hertz-related issues. Rather than engage with the Debtor's professionals and Hertz, Sixt immediately informed the parties that it would not bid any further, and then the entire Sixt team exited the auction room. In the wake of Sixt's abrupt departure, Simply Wheelz concluded the auction and proclaimed Catalyst to be the prevailing purchaser based on its improved overbid.

Unable to respond with a topping bid at the auction, Sixt filed an objection to the Advantage/Catalyst Sale. On December 17, 2013, after a lengthy extensive evidentiary hearing, the Bankruptcy Court overruled the objection of Sixt (both on the merits and for lack of standing) and approved the Advantage/Catalyst Sale, declaring it to be in the best interests of Simply Wheelz and its creditors.<sup>3</sup>

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<sup>3</sup> Under the Bankruptcy Code, Sixt has 14 days from the date of entry of the sale order to file an appeal. The sale order was entered on January 2, 2014 (Dkt. No. 71). Sixt's prospects for prevailing on any appeal are virtually nil. Under well-settled case law, a losing bidder lacks standing to challenge a bankruptcy sale unless it is a creditor, and Sixt was indisputably not a creditor. Moreover, the bankruptcy court's central finding – that approval of the sale to Catalyst was in the best interests of the debtor and its creditors and that the auction process was fair – was overwhelmingly supported by the unrebutted testimony of Simply Wheelz's president (Bill Plamondon), the head of the Company's financial advisory firm (Ed Ordway) and FSNA's president (Tom McDonnell). All three testified about the sale process and the Company's even-handed treatment of Sixt, including that Sixt had the opportunity to speak with Hertz (in the presence of Company representatives or advisors) to obtain more information about the proposed terms of and the status of the Hertz settlement (which had not been finalized by the time of the auction). Sixt did not present any witnesses of its own (other than Tom McDonnell, who simply echoed

That same day and immediately prior to the Sale Hearing, the Bankruptcy Court approved a comprehensive settlement of a broad range of disputes and issues involving Hertz (the “Hertz Settlement”) – a settlement that was “portable” to whichever bidder prevailed at the auction. This Hertz Settlement satisfies a critical condition precedent to the Advantage/Catalyst Sale, but it also imposes an accelerated timeline for returning the Hertz vehicles and consummating the Advantage/Catalyst Sale. In a nutshell, the Hertz Settlement:

- Obligates Simply Wheelz to return 6,000 Hertz vehicles during the post-petition period ending January 31, 2014 and requires the return of the balance of the Hertz fleet by February 28, 2014, except that Catalyst has the option of continuing to use up to 5,000 Hertz vehicles for the month of March 2014 and to purchase any of those vehicles.
- Obligates Simply Wheelz prior to closing, and Catalyst, following closing, to make multi-million dollar payments to Hertz as consideration for the continued use of the Hertz vehicles (the payments for the months of January, February and March 2014 approximate the lease payments called for under the terminated Hertz lease agreements).
- Provides for Hertz’s consent to (i) the assignment to Catalyst (without any obligation to pay Hertz for any prepetition arrearages) of the various subconcession agreements, joint use agreements, master services agreements,

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what the other two witnesses said). Finally, and most importantly, should Sixt appeal, the Bankruptcy Code expressly allows Catalyst and Simply Wheelz to proceed to close the sale during the pendency of the appeal so long as Sixt fails to obtain a stay of the sale order, and even were Sixt subsequently to prevail on appeal, the sale transaction could not be overturned as long as Catalyst is deemed to be a “good faith” purchaser. The Bankruptcy Court’s sale order contains an express good faith purchaser finding and the undisputed evidence at the hearing supported that finding (i.e., negotiations were robust and at arms’ length and absence of collusion or side deals). This statutory mootness doctrine is set forth in Section 363(m) of the Bankruptcy Code and provides as follows:

“The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section [i.e., the subsections pursuant to which a sale order is entered] of a sale or lease of property does not affect the validity of a sale or lease under such authorization to any entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

It is exceedingly unlikely that Sixt could obtain a stay of the sale order pending appeal, given the extreme weakness of its legal position on the merits, and the need for Sixt to post a bond to cover the damages to the Company were the sale stayed and Sixt loses the appeal.

service center/QTA agreements, leases or subleases and other applicable agreements relating to Advantage Business, in each case, between Hertz and/or any affiliate thereof, on the one hand, and Debtor or FSNA, on the other hand, and (ii) the sale of airport concession agreements not acquired by Catalyst to any third party pursuant to a competitive bidding process (or subject to Hertz's right of first refusal).<sup>4</sup>

- Obligates Hertz and its affiliates to use commercially reasonable efforts to obtain, on behalf of Simply Wheelz (prior to closing) and Catalyst (after closing), on-airport automobile rental concessions for the Baltimore, JFK, Newark and LaGuardia airports.
- Provides for the exchange of mutual releases by Hertz, on the one hand, and FSNA, Simply Wheelz and Tom McDonnell, on the other hand.
- Entitles Hertz, upon the occurrence of any material default under the Hertz Settlement, to relief from the automatic stay so that it can repossess its vehicles and terminate its contracts and leases with Simply Wheelz.

A copy of the executed Hertz Settlement, including all attachments and exhibits pertaining thereto, is attached to this petition as Exhibit A.

Having obtained Bankruptcy Court approval of the Advantage/Catalyst Sale, and with the Hertz Settlement in place, the parties now are focused on closing this transaction as soon as possible. Failure to achieve an expeditious emergence from bankruptcy will delay and perhaps jeopardize the operational turnaround of the Advantage Business as well as risk a default under the Hertz Settlement, which in turn could trigger a liquidation of the business were Hertz to exercise its right to repossess its vehicles.

**Commission Approval Required:** Catalyst's purchase of the Advantage Business is subject to the Commission's Order. Paragraph V of the Order prohibits FSNA from selling the Assets To Be Divested without prior approval of the Commission for a period of three years after the Order became final on July 10, 2013. Paragraph 1 of the Order defines the Assets To Be

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<sup>4</sup> The Hertz Settlement does not permit Simply Wheelz to sell to any third party any subconcession or other agreements to which Hertz or an affiliate is a party.

Divested to include the Advantage Assets To Be Divested, the DTAG Assets To Be Divested and the Additional Assets To Be Divested. The assets divested include all assets used in the Operation Of A Car Rental Facility, as defined in Paragraph 1 of the Order. Accordingly, FSNA must seek prior approval of the Commission to sell these assets to Catalyst – a requirement that is also included as an express closing condition in the Purchase Agreement.

**Sale Agreement:** Catalyst, Simply Wheelz, and FSNA executed the Asset Purchase Agreement (“Purchase Agreement”) on December 16, 2013. In exchange for Catalyst’s credit bid of up to \$46 million of DIP indebtedness and its assumption of the Assumed Liabilities, Catalyst will receive all Seller Purchased Assets from Simply Wheelz and the FSNA Purchased Assets from FSNA, in each case as defined in the Purchase Agreement.<sup>5</sup>

The Advantage Assets to be acquired by Catalyst include the specified airport concession agreements and related real-property leases, OTA agreements, specified operational agreements (including fuel supply agreements), equipment (including vehicle, IT assets, etc.) and documents related to the Advantage Business. Those contracts and other agreements not specified by Catalyst will be retained by Simply Wheelz and FSNA, respectively, and ultimately wound down appropriately to maintain relationships with the airports. FSNA will also retain assets related to unrelated businesses currently operated by FSNA apart from the Advantage Business. Catalyst also has the right to offer employment to any of the employees of FSNA or Simply Wheelz related to the Advantage Business. Upon acquisition of the specified agreements Catalyst will have an obligation to pay all amounts necessary to cure all defaults, if any, pursuant to the

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<sup>5</sup> This Application adopts and incorporates by reference all Definitions set forth in the Purchase Agreement.

assumed agreements and will be obligated to satisfy the obligations under such agreements thereafter.

A copy of the executed Purchase Agreement, including all attachments and exhibits pertaining thereto, is attached to this petition as Exhibit B.

Upon consummation of the planned transaction, Catalyst intends to create a viable and vigorous rental car company, capable of competing over the long term, and in particular with Hertz/DTAG, Enterprise and Avis, among others.

**The Sale of the Advantage Assets to Catalyst will Preserve those Assets and Create a Viable Competitor**

The purpose of the FTC's Order will be well-served by the proposed transaction. By acquiring the Advantage Assets, Catalyst will prevent liquidation of a potential competitor to the major car rental companies (among others) and avoid the anticipated competitive harm that the Commission's Order sought to prevent. Catalyst will do more than keep Advantage in business – it will contribute its operational turnaround expertise and significant capital resources to transform Advantage into a vigorous national competitor with a “main airport” presence. In contrast to the efforts of FSNA and its sponsor, Catalyst plans to capitalize generously, re-fleet without reliance on Hertz, supplement management as appropriate, and strategically select locations to ensure the profitability of the business and to create a platform for profitable expansion. Expedited FTC approval of the Advantage/Catalyst sale will avert further losses and facilitate Catalyst's transformation of the Company into a robust national competitor.

**FSNA as Operator:** Several factors contributed to Simply Wheelz's bankruptcy: (a) the structure of the fleet under the now-apparent uneconomic terms of its fleet leasing arrangement with Hertz, (b) the inadequacy of its capitalization, (c) the unprofitability of a number of its car rental locations, and (d) the geographic dispersion of its senior management team.

***Fleet Issues.*** Through a series of complex Macquarie Capital-financed transactions, FSNA completed its acquisition of the Advantage Business from Hertz in early 2013. Simply Wheelz opted initially to lease 24,000 vehicles from Hertz to constitute the Advantage fleet. The lease terms required Simply Wheelz (backed by a FSNA guaranty) to: (1) remit monthly rental payments to Hertz based upon the quantity and value of the vehicles used; and (2) divest the Hertz fleet through Manheim auctions on or before December 31, 2014. If a vehicle was sold for less than the book value that Hertz had specified in the lease agreements, Simply Wheelz was required to pay the difference to Hertz. While originally viewed as a reasonable arrangement, changes in the market conditions for used car sales made these provisions highly disadvantageous to Simply Wheelz. The vehicle auctions began in June 2013, and Simply Wheelz absorbed significant losses in those auctions. More alarmingly, an extrapolation of these losses across the entire Hertz fleet would potentially yield a staggering liability in excess of \$39 million. This looming liability precluded Simply Wheelz from raising (from Macquarie or any other third party) the tens of millions of dollars of capital necessary to fund the down payment for new fleet financing to replace the Hertz arrangement.

***Inadequate Capitalization.*** It is now apparent that Simply Wheelz was undercapitalized. Macquarie's investment was limited to (i) an equity contribution of \$15 million in FSNA and (ii) a post-closing \$7.5 million cash collateral deposit to secure Simply Wheelz's borrowing from Bank of America. Simply Wheelz also lacked a working capital facility from a financial institution. Simply Wheelz did have a credit facility with Hertz, but that facility cross-defaulted to the Hertz vehicle leasing arrangement and hence was never drawn on. As a result of its undercapitalization, Simply Wheelz was unable to withstand the \$20 million plus in losses that it sustained during its first year of operations.

***Unprofitability of Numerous Car Rental Locations.*** In acquiring the Advantage Business from Hertz, FSNA (and Macquarie) could not select which car rental locations to take, and due to the structure of Hertz's accounting systems, it could not gather the information necessary to conduct a location-by-location profitability analysis. Since the closing, FSNA discovered that a number of the acquired locations were unprofitable and could not be turned around.

***Lack of a Centralized Location for Senior Management Team.*** The senior management team of Simply Wheelz is scattered around the country. The President of Simply Wheelz is located in Florida, the Chief Operating Officer is located in Chicago, most of the finance team is housed in New Jersey, the head of airport relations and properties resides in Tulsa, Oklahoma, members of the pricing team are widely dispersed, and the balance of the team is in Jackson, Mississippi. Such geographic dispersion of the senior management team is unwieldy, especially in a start-up/turnaround situation.

**Catalyst As Acquirer:** Catalyst is not a typical financial buyer. It is a \$3 billion institutional investment manager that specializes in operational turnarounds and seeks to invest only in companies that can be reconfigured into sustainable, salable enterprises. Investors must agree to long term investment commitments, including a 10-year lockup period with two 1-year extensions, which enables Catalyst to make correspondingly long term investments and insulates the firm from pressure to exit early. Catalyst's deep pockets and hands-on operator expertise uniquely position it to revitalize distressed companies.

Catalyst has a proven track record of operational turnaround. Its prior and current investments include: YRC, which had generated negative EBITDA of \$567 million prior to Catalyst leading an out-of-court restructuring and management team search, and now generates

positive EBITDA of \$230 million; Cabovisão, Portugal's second-largest cable operator, at which Catalyst led operational and financial improvements resulting in a tripling of EBITDA from €2 million to €6 million; and Gateway Casinos, one of Canada's largest casino operations, which has seen its EBITDA increase substantially under Catalyst's leadership. Catalyst's ability to revitalize companies has yielded impressive financial results. Catalyst's Fund II (2006 vintage) is the #2 fund globally, its Fund III (2010 vintage) is the #1 fund globally, and its Fund IV (2013 vintage) has more than \$800 million of committed capital.

Additionally, Catalyst has demonstrated success in the hospitality sector and with nationwide retail-oriented businesses. Its extensive experience in hospitality and retail includes successful investments in Gateway Casinos, and Natural Markets Food Group, a fast-growing retail concept which has expanded from the East Coast of the United States to the West Coast of Canada. In both cases, Catalyst has built the operations, including establishing the management team, financial controls, and marketing.

Catalyst's business plan going forward will address the financial and operational issues that led to the bankruptcy and will enable Advantage to compete vigorously as the FTC intended.

First, Catalyst will fully capitalize Simply Wheelz by committing over \$100 million pre and post-Chapter 11. During the bankruptcy, Catalyst has already committed to provide a \$46 million DIP Facility, and the company's recent projections suggest that this commitment will likely increase. In addition, Catalyst will commit over \$60 million to fund the equity portion of a new fleet and to make much needed capital investments in marketing, IT/systems, and personnel. Overall, with its DIP financing, operational financing, and fleet equity commitments, Catalyst will invest over eight times the capital invested by Macquarie. Catalyst currently has more than \$900 million of un-deployed, long term capital in hand and hence there is no question about its

financial wherewithal to fund the amounts necessary to ensure the success of the Advantage Business.

Second, Catalyst is prepared to supplement and strengthen the senior management team as appropriate, and is happy to share its views with the Commission.

**REDACTED**

In addition, Catalyst plans to obtain consents for on-airport assignments of Newark, JFK, LaGuardia, and Baltimore-Washington airports as soon as possible. Acquiring those locations will greatly enhance the national profile of the Advantage brand, but failure to obtain such locations will not be fatal to the business case for the Advantage/Catalyst Sale. Catalyst estimates that these four locations will initially generate a total of \$15-20 million of revenue and \$1.5-2.0 million of run-rate EBITDA, a meaningful contribution to a company with less than \$250 million of revenue and negative current EBITDA, but more importantly will also generate substantial growth for the company over the medium to long term. In accordance with Hertz's obligations under the Order, Catalyst and Advantage propose working with the Commission to facilitate an adequate resolution with Hertz and the airport authorities.

Catalyst will also foster the Company's international relationships in order to increase revenue and compete with the big three rental car companies. As an example, Advantage has maintained a strategic alliance with Europcar, and Catalyst will continue to develop that relationship post-closing.

Catalyst likewise is mindful that it will remain subject to the remaining term of the prior approval provisions in Paragraph V of the Order. Post-closing, the Company, under Catalyst's stewardship, will increase its revenue through strengthening systems, integrating management and investing in sales and marketing initiatives, to drive an increase in revenue of \$57 million in 2016. Moreover, with the addition of the NYC and Baltimore airports, revenue will further increase by \$45 million over three years. Additionally, Catalyst will limit ongoing operating losses at the Company by focusing the business on a core footprint of locations that best fit the Company's leisure brand focus, which will improve EBITDA by a net \$11 million over three years. Advantage's fleet size will also be reduced in line with the reduced footprint so that the

Company has the right cars in the right markets to maximize its profitability. Catalyst will work with the Company to normalize fleet financing costs and the Company will right-size its corporate overhead so that the Company's EBITDA is expected to improve from an estimated loss of \$(22) million in 2013 to a profit of \$14 million in 2016.

**Need for Urgent Approval:** FSNA respectfully requests that the public notice period for this submission be waived or reduced. With virtually no collateral protection, Catalyst stepped in to provide DIP financing that averted a liquidation of the Advantage Business and enabled the Company to pursue an auction process. As a DIP lender, Catalyst cannot finance the entirety of the fleet re-purchase or negotiate airport concessions, so delays in approval and/or closing would be disastrous and likely result in liquidation. Closing this transaction, on the other hand, will protect the Advantage Assets.

Catalyst emerged as the winning bidder in that auction, and the Bankruptcy Court has approved the Advantage/Catalyst Sale. Without prompt FTC approval, the Advantage Business will languish in bankruptcy. A protracted bankruptcy would certainly heighten the risk of management and employee defections by exacerbating an already uncertain situation, and it would also delay meaningful engagement with airport authorities with respect to certain critical concession transfers – including, most importantly, the Baltimore, JFK, LaGuardia and Newark airport authorities which have been reluctant to negotiate pending Advantage's emergence from bankruptcy.

Of even greater concern, a prolonged stay in bankruptcy is financially unsustainable. Simply Wheelz is experiencing accelerating operating losses, driven by deterioration in the Company's revenue and other operating metrics as well as the burden of substantial professional fees and other bankruptcy-related expenses. Moreover, in order to comply with the Hertz

Settlement, the Advantage Business urgently requires hundreds of millions of dollars of new financing to replace the Hertz fleet. As the Company has already discovered, obtaining such fleet financing is far more expensive in bankruptcy than outside of a proceeding (e.g., much higher interest rates, fees and down payments and onerous prepayment penalties), and in any case, the equity portion of that financing cannot be funded without a dramatic increase in the DIP Facility provided by Catalyst.

To date, Catalyst has been funding the Company's escalating operating losses and its fleet financing costs through its DIP Facility. But it is unreasonable to expect Catalyst to substantially increase its financing during this limbo period, especially if it perceives that the Company is having difficulty obtaining FTC consent. And if the DIP Facility is exhausted or terminated prior to FTC approval, Simply Wheelz will likely have no choice but to liquidate.

Accordingly, expedited FTC approval will avoid the risk of liquidation, minimize the risk of employee defections and permit Catalyst to devote a greater amount of its committed capital to the post-closing operations and fleet acquisition needs of the Advantage Business and ultimately to accelerate the implementation of its turnaround plans to create a formidable competitor in the national car rental market. Without prompt approval of the transaction, consumers may lose the competitive benefits intended by the FTC in securing the relief it provided in connection with the Hertz/DTAG transaction.

**The Sale of the Advantage Assets to Catalyst is Consistent  
with the Purpose of the Commission's Order**

Catalyst's proposed acquisition of the Advantage Assets will appropriately continue to check the anticompetitive effects that the Commission alleged would otherwise result without the divestiture of the Assets To Be Divested. According to the Order, without the required divestiture, Hertz's acquisition of DTAG would have resulted in 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. By ordering Hertz to sell the Assets To Be Divested, the Commission intended to mitigate any anticipated anticompetitive effects by creating a viable competitor to Hertz/DTAG, Avis, and Enterprise, among others. Catalyst's proposed acquisition recreates that important competitor. Advantage's limited access to financing and expiring fleet could easily result in liquidation if Catalyst is not allowed to acquire the Advantage Assets. In contrast, Catalyst has committed to increased levels of funding, management controls, fleet independence and strategic planning for the business, all of which substantially enhances its opportunities for success – far beyond what FSNA was able to achieve (and far beyond anything offered by Sixt, the only other bidder, who in the end was unwilling to make the required financial commitments).

### **Conclusion**

The proposed sale of the Advantage Assets to Catalyst is in the best interests of the consuming public and will improve competition in the national rental car market by preserving a new, viable competitor to the major rental car companies. Catalyst brings the necessary expertise, capital, and long-term commitment to ensure Advantage's success. Expedited approval will prevent further bankruptcy-related losses and will allow Catalyst to promptly acquire the financing and fleet that Advantage urgently needs. For these reasons, FSNA respectfully requests that the Commission promptly approves the sale of the Advantage Assets to Catalyst.

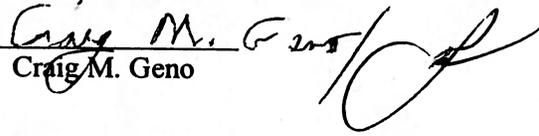
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Respectfully submitted,

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