MERGER ANTITRUST LAW

Unit 4: Hertz/Avis Budget/Dollar Thrifty

Classes 8-9

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[1] A full set of the press releases, investor presentations, and SEC filings that tell the story of the bidding war and the emergence of Hertz as the winning bidder is contained in the Unit 7 supplemental materials. *See* The Hertz/Avis Budget/Dollar Thrifty: The Bidding War.

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The Deal

THE MARKET ENVIRONMENT[1]

The U.S. daily car rental industry has two principal segments: the airport market and the local market. Rental car locations in the airport market rent primarily to business and leisure travelers. Rentals by airline travelers at or near airports account for approximately one-half of the total rental car market in the United States and are significantly influenced by developments in the travel industry, particularly in airline passenger traffic. The local rental volume is primarily driven by local business use, leisure travel, and the replacement of cars being repaired.[2]

The major players

At the beginning of 2007, in addition to several smaller companies, there were five major rental car companies in the United States, each with over 150,000 cars in service serving different mixes of both locations and customer types:[3]

1. *Enterprise Rent-A-Car* was the largest rental car company, with over 6100 U.S. locations and over 640,000 cars in service. Its domestic share of U.S. rental car revenues was 33.0 percent. Privately owned, the company was founded in St. Louis in 1957 as an auto leasing service and expanded into daily rentals with locations in cities and suburbs, focusing on customers who needed a replacement vehicle due to an accident, mechanical repair, or theft. Enterprise owned and operated 100 percent of its locations. The company was seeking to expand into some major airports but was having trouble obtaining prime real estate locations.

2. *Avis Budget Group* was the second largest rental car company, operating over 1200 U.S. locations (including franchisees) with over 204,000 cars in service. Its domestic share of U.S. rental car revenues was 21.4 percent. Avis was a leading car supplier to the premium commercial and leisure segments of the travel industry, while Budget was a leading rental car supplier to the price-conscious segments of the industry.[4] The

1. Consistent with the timing of the transaction, this note pertains to the prepandemic world.

2. *See, e.g.*, Hertz Global Holdings, Inc., Form 10-K for the Fiscal Year Ended December 31, 2006, at 6 (filed Mar. 30, 2007).

3. The following descriptions are as of 2007. All location and fleet size numbers are from Auto Rental News, 2007 U.S. Car Rental Market. U.S. market shares are calculated from the same source.

4. In 2007, Avis, Budget, and Budget Truck accounted for approximately 63%, 30% and 7% of our vehicle rental revenue. *See* Avis Budget Group, Inc., Form 10-K for the Fiscal Year Ending December 31, 2007, at 1.

group earned approximately 81% of its nearly $4.0 billion in U.S. car rental revenue from on-airport locations.[5]

3. *Hertz* was the third largest rental car company, operating over 2800 U.S. locations with over 320,000 cars in service. Its domestic share of U.S. rental car revenues was 18.1 percent. Hertz earned approximately 77 percent of its U.S. revenue from its airport locations and was the leading airport car rental brand.[6] Hertz, which owned and operated almost all its locations, had a reputation for having the highest quality service and catered largely to business customers and high-end leisure companies. In 2007, it introduced a new brand, Simply Wheelz by Hertz, with a location in Orlando, to appeal to price-conscious leisure travelers.

4. *National Car Rental* and *Alamo Rent A Car* were two brands owned by privately owned Vanguard Rental Car, the fourth largest car rental company by revenue in the United States. Its domestic share of U.S. rental car revenues was 13.5 percent. Vanguard specialized in serving customers at major airport locations. Alamo's discounts appealed to price-sensitive shoppers, while National competed for premium business travelers. Including franchises, Vanguard operated 662 U.S. locations with over 230,000 cars in service and approximately $2.9 billion in revenues.[7]

5. *Dollar Thrifty Automotive Group*, the fifth largest U.S. rental car company, owned Dollar and Thrifty, two value rental car brands (i.e., brands that appealed to price-conscious customers). Its domestic share of U.S. rental car revenues was 7.8 percent. In the United States, Dollar's main focus was to operate company-owned stores located in major airports, deriving substantial revenues from leisure and tour package rentals, while Thrifty focused on serving both the airport and local markets and operated through a network of company-owned stores and franchisees.[8] Together with franchisees, Dollar Thrifty operated at 606 U.S. locations with 167,000 cars in service and approximately $1.7 billion in domestic and Canadian revenues.

As the chart below shows, other rental car companies were operating in 2007, but none had any national significance.

5. *Id.*

6. Hertz Global Holdings, Inc., Form 10-K for the Fiscal Year Ended December 31, 2007, at 4, 10, 12 (filed Mar. 30, 2007).

7. Auto Rental News, 2007 U.S. Car Rental Market.

8. Dollar Thrifty Automotive Group, Inc., Form 10-K for the Fiscal Year Ending December 31, 2007, at 4, 6.

U.S. Rental Car Market

Source: Auto Rental News

			2007	
Company	U.S. Cars in Service (Average)	# U.S. Locations	2007 Revenue	% Industry Revenue
Enterprise Rent-A-Car	643,289	6,131	$7,100	33.0%
Hertz	327,200	2,850	$3,900	18.1%
National Car/Alamo Rent A Car	232,892	662	$2,900	13.5%
Avis Budget Group	347,800	2,050	$4,600	21.4%
Dollar Thrifty Automotive Group	167,000	606	$1,680	7.8%
Advantage Rent-A-Car	20,000	108	$220	1.0%
U-Save Auto Rental System	11,800	390	$102	0.5%
Payless Car Rental System	10,000	41	$100	0.5%
ACE Rent A Car	9,000	85	$97	0.5%
Fox Rent A Car	8,700	29	$78	0.4%
Rent-A-Wreck of America	7,280	280	$41	0.2%
Triangle Rent-A-Car	6,000	30	$45	0.2%
Affordable/Sensible	5,000	225	$36	0.2%
Independents	65,500	3,275	$590	2.7%
Total			**$21,489**	**100%**
			4-FCR	86.1%

Increasing consolidation

The cost function of rental car companies, like the airlines, railroads, and many other companies, is characterized by high annually recurring fixed costs and relatively low marginal costs. A rental car company's fixed costs consist of its vehicle fleet (primarily debt service), staffing and maintenance of its rental locations, and real estate lease and airport concession fees. Once the company has the cars and the rental locations in place, the marginal cost of renting to a customer—primarily wear and tear on the vehicle—is relatively low.

National car rental companies at the time typically operated their cars for less than a year before replacing them.[9] The difference between the acquisition price of cars and the value the car company receives when the car exits the fleet (the residual

9. *See* First Research, Automobile Rental and Leasing (Mar. 30, 2009). In 2006, for example, Hertz average holding period for a rental car was ten months in the United States. Hertz, Form 10-K for 2006, *supra* n.2, at 14.

value) is a crucial determinant of rental car company profitability. Historically, the major rental car companies had obtained a significant portion of their fleets under "repurchase" or "residual value" programs with car manufacturers. Under these programs, the manufacturer would buy back their cars at a specified time in the future at a guaranteed repurchase price, provided the car did not exceed a mileage limit (typically 30,000 miles) and was in reasonable condition.[10] Cars acquired under these programs are known as *program cars*. Going into 2007, Ford, General Motors, and Chrysler were cutting back on these low-profit repurchase programs for fleet customers.[11] This forced the rental car companies to rely increasingly on *risk cars*, that is, cars that did not have a guaranteed repurchase price and that the rental car company would have to sell in the used car market when the company removed the car from the fleet. The net effect increased fleet depreciation costs for the rental car companies. Dollar Thrifty's vehicle depreciation costs, for example, increased by 25 percent in 2007 over the prior model year.[12] In the short term, car companies responded by increasing the time they kept their vehicles in the fleet and raising rental rates. In the longer term, however, industry analysts were predicting a consolidation in the U.S. rental car industry to enable rental car companies to reduce costs by consolidating management, eliminating duplicative overhead costs, and sharing vehicles and service facilities, if not increasing buyer purchasing power.[13]

In February 2007, the New York Times reported that Dollar Thrifty had been in talks for several months to acquire Vanguard Car Rental, the owner of the National and Alamo car rental brands that specialized in serving corporate customers at major airport locations.[14] Enterprise, whose primary strength was in the in-town and insurance replacement segments, viewed the airport segment as its next opportunity for growth. Prompted by the news that two of the largest airport rental car companies might merge, Enterprise approached Vanguard.[15] On March 30, 2007, Enterprise

10. *See* First Research, Automobile Rental and Leasing (Mar. 30, 2009).

11. *See Report: Detroit 3 Will Cut Back Rental Buybacks*, AUTOMOTIVE NEWS, Feb. 5, 2007. The Avis Budget Group, for example, had been able to obtain 88 percent of the rental cars purchased for its domestic car fleet under repurchase agreements with car manufacturers, while that number dropped to 75 percent in 2007. *See* Avis Budget Group, Inc., Form 10-K for the Fiscal Year Ending December 31, 2007, at 11. *See generally* Tim Yopp & Mark Eckhaus, *The ABC's of Manufacturer Repurchase Programs*, AUTO RENTAL NEWS, May/June 2010; Carol Loomis, *The Tragedy of General Motors*, FORTUNE, Feb. 20, 2006, at 72 (noting that General Motors on its fleet repurchase programs to rental car companies, which not only provide deep purchase price discounts but also enable the rental car companies to quickly flip their recently new and well-maintained vehicles into the resale market where they competed with new vehicles, thus depressing the price of new GM cars generally).

12 *See Industry Forecast 2008*, AUTO RENTAL NEWS, November/December 2007.

13. *See* Bernard Simon, *Enterprise Rent-A-Car to Buy Vanguard*, FINANCIAL TIMES, Mar. 30, 2007.

14 *See* Andrew Ross Sorkin, *Four Brands in Car Rental May Merge*, N.Y. TIMES, Feb. 14, 2007, at C1.

15 *See* Andrew C. Taylor, *Enterprise's Leader on How Integrating an Acquisition Transformed His Business*, HARV. BUS. REV., Sept. 2013, at 41.

announced that it had entered into an agreement to acquire Vanguard.[16] While the companies did not announce the acquisition price at the time, a later article by Andrew Taylor, Enterprise's CEO and son of founder Jack Taylor, revealed that the price was around $3 billion.[17] The acquisition created a U.S. network of almost 7000 locations, including 230 major airports.[18] The transaction cleared its regulatory review by the Federal Trade Commission in May 2007, suggesting that the deal did not receive a second request.[19] The transaction closed on August 1, 2007.[20]

Shortly thereafter, Dollar Thrifty began considering whether to do a deal with either Hertz or Avis Budget.[21] Discussions with both companies ensued. In June 2008, as the economy deteriorated in the financial recession and difficulties in the financing markets increased, Avis informed Dollar Thrifty that it was no longer interested in pursuing a merger and the parties terminated their discussions. While Dollar Thrifty and Hertz continued their discussions, Dollar Thrifty's board found Hertz's indications of interest in what it might be willing to pay inadequate. In March 2009, as the financial crisis continued, Dollar Thirty's board of directors decided that the prevailing conditions in the financing and car rental markets would make any merger transaction extraordinarily difficult to execute and that Dollar Thrifty's management needed to devote its full attention to the company's day-to-day operations. Several days later, Dollar Thrifty and Hertz ceased discussions.

Hertz apparently did not have the same reservations as Dollar Thrifty. In April 2009, Hertz outbid Enterprise to purchase the assets of Advantage Rent A Car, a price-oriented brand popular with leisure travel customers, out of bankruptcy for approximately $30.3 million.[22] In December 2008, Advantage had filed for bankruptcy protection after Chrysler Financial canceled its line of credit, laid off half of its workforce, and closed 21 of its U.S. retail locations. Advantage cited a drop in leisure travel, greatly increased costs, and frozen credit markets as the recession continued as the reasons for its financial problems.[23] Hertz announced that it would operate Advantage at 20 key leisure travel locations. Hertz also rebranded Simply

16. *See* Enterprise Rent-A-Car, Press Release, Enterprise Rent-A-Car to Acquire Vanguard Car Rental (Mar. 30, 2007); Landon Thomas Jr., *Enterprise Rent-a-Car Buys Vanguard, a Rival*, N.Y. TIMES, Mar. 31, 2007, at C9.

17. Taylor, *supra* note 15.

18. *Enterprise Rent-A-Car: Business Travelers to Immediately Benefit from Acquisition of Vanguard Car Rental*, BUSINESS WIRE, July 23, 2007.

19. *See FTC Will Allow Enterprise Purchase of Vanguard*, AUTO RENTAL NEWS, May 31, 2007.

20. *See Enterprise Acquisition of Vanguard Complete*, AUTO RENTAL NEWS, Aug. 1, 2007.

21. Auto Rental News reported that Dollar Thrifty had been in merger talks with Vanguard Car Rental prior to the announcement that Enterprise was acquiring Vanguard. *See Dollar Thrifty, Vanguard in Early Merger Talks*, AUTO RENTAL NEWS, Feb. 14, 2007.

22. *See Hertz Wins $30.3M Bid for Advantage Assets*, AUTORENTALNEWS.COM (Apr. 1, 2009).

23. *See* Kathy Jackson, *Denny Hecker's Rental Business Seeks Chapter 11 Protection*, AUTORENTALNEWS.COM (Dec. 9, 2008); *Advantage Rent-A-Car Files for Bankruptcy*, USATODAY.COM (Dec. 8, 2008);

Wheelz by Hertz, the economy brand for leisure travelers Hertz started in 2007 and which at the time operated in six airports in the United States as Advantage.[24]

In December 2009, Hertz contacted Dollar Thrifty to explore whether Dollar Thrifty might be interested in restarting discussions of a potential business combination in light of the recent improvements in the financial markets. Dollar Thrifty agreed. During these renewed Hertz discussions, Dollar Thrifty's board of directors also considered contacting Avis. The Dollar Thrifty board ultimately decided not to do so in light of the difficulty they believed Avis would face in raising sufficient financing to make a competitive cash bid given its highly leveraged capital structure and the state of the debt financing markets at the time, the relative antitrust risks the Dollar Thrifty board perceived in a combination with Avis compared to the antitrust risks arising from a combination with Hertz (including the risk that Avis's ownership of the Budget leisure car rental brand would invite additional regulatory scrutiny), Dollar Thrifty's history of numerous unsuccessful efforts to sell the company and the likelihood that rumors of new merger-related discussions could be highly disruptive and demoralizing for the company's employees, and the concern that Hertz would cease negotiating if Dollar Thrifty opened discussions with Avis. On April 26, 2010, Hertz and Dollar Thrifty announced that they had reached an agreement whereby Hertz would purchase Dollar Thrifty for cash and stock valued at $41 per share of Dollar Thrifty stock. The transaction value for the deal was about $1.2 billion. At the time of the acquisition, Dollar Thrifty's existing fleet debt was $1.6 billion.[25]

24. *See* The Hertz Corporation, Form 10-K for the Fiscal Year Ending December 31, 2008, at 10 (filed Mar. 4, 2009); *Hertz Wins $30.3M Bid for Advantage Assets*, AUTORENTALNEWS.COM (Apr. 1, 2009); *Hertz Rolls Out Budget Self-Service Rentals*, USATODAY.COM (Aug. 23, 2007).

25. Hertz Global Holdings, Inc., *Investor Presentation, Hertz Acquires Dollar Thrifty* 4 (Apr. 26, 2010).

U.S. Rental Car Market

Company	2007				2008				2009				2010			
	U.S. Cars in Service (Average)	# U.S. Locations	2007 Revenue	% Industry Revenue	U.S. Cars in Service (Average)	# U.S. Locations	2008 Revenue	% Industry Revenue	U.S. Cars in Service (Average)	# U.S. Locations	2009 Revenue	% Industry Revenue	U.S. Cars in Service (Average)	# U.S. Locations	2010 Revenue	% Industry Revenue
Enterprise Rent-A-Car	643,289	6,131	$7,100	33.0%	627,314	6,159	$10,400	41.6%	842,376	6,113	$9,500	47.4%	850,689	6,187	$9,800	47.6%
Hertz	327,200	2,850	$3,900	18.1%	311,000	29,203	$3,670	14.7%	286,000	1,700	$3,950	19.7%	290,000	2,300	$4,081	19.8%
National Car/Alamo Rent A Car	232,892	662	$2,900	13.5%	226,717	647	$2,900	11.6%								
Avis Budget Group	347,800	2,050	$4,600	21.4%	375,000	22,886	$5,200	20.8%	300,000	2100	$4,000	20.0%	270,000	2,100	$3,900	18.9%
Dollar Thrifty Automotive Group	167,000	606	$1,680	7.8%	140,184	609	$1,690	6.8%	106,245	600	$1,467	7.3%	108,000	464	$1,628	7.9%
Advantage Rent-A-Car	20,000	108	$220	1.0%	15,000	45	$136	0.5%								
U-Save Auto Rental System	11,800	390	$102	0.5%	11,500	380	$98	0.4%	11,000	350	$98	0.5%	10,950	350	$102	0.5%
Payless Car Rental System	10,000	41	$100	0.5%	10,000	41	$100	0.4%	9,000	38	$100	0.5%	9,500	35	$118	0.6%
ACE Rent A Car	9,000	85	$97	0.5%	9,000	101	$97	0.4%	8,500	88	$95	0.5%	9,000	95	$100	0.5%
Fox Rent A Car	8,700	29	$78	0.4%	8,700	29	$81	0.3%	7,700	16	$105	0.5%	9,500	13	$110	0.5%
Zipcar											$125	0.6%	7,000	94	$143	0.7%
Rent-A-Wreck of America	7,280	280	$41	0.2%	5,775	222	$36	0.1%	5,075	195	$32	0.2%	4,833	179	$35	0.2%
Triangle Rent-A-Car	6,000	30	$45	0.2%	5,500	30	$41	0.2%	4,200	27	$38	0.2%	4,000	27	$40	0.2%
Affordable/Sensible	5,000	225	$36	0.2%	4,000	210	$35.5	0.1%	3,852	198	$32.5	0.2%	3,589	179	$34	0.2%
Independents	65,500	3,275	$590	2.7%	63,000	62,003	$540	2.2%	53,500	5,200	$502	2.5%	52,500	5,100	$500	2.4%
Total			**$21,489**				$25,025	100.0%			$20,045	100.0%			$20,591	100.0%
			4-FCR	86.1%			4-FCR	88.6%			4-FCR	94.4%			4-FCR	94.3%

Source: Auto Rental News

Hertz Investor Relations

Hertz Signs Definitive Agreement to Acquire Dollar Thrifty

PARK RIDGE, NJ, Apr 26, 2010 (MARKETWIRE via COMTEX) --Hertz Global Holdings, Inc. (NYSE: HTZ) ("Hertz") and Dollar Thrifty Automotive Group (NYSE: DTG) ("Dollar Thrifty") announced today that they signed a definitive agreement providing for Hertz to acquire Dollar Thrifty for a purchase price of $41.00 per share, in a mix of cash and Hertz common stock, based on Friday's closing stock price. When completed, Hertz anticipates that the transaction will be immediately accretive to annual adjusted earnings per share.

Mark P. Frissora, Hertz's Chairman and Chief Executive Officer, said, "Combining Hertz and Dollar Thrifty is an excellent strategic fit. Dollar Thrifty is a $1.6 billion business with more than 1,550 corporate and franchise rental locations worldwide which, when combined with our global network, will serve rental customers on six continents from approximately 9,800 locations. Together we will be able to compete even more effectively and efficiently against other multi-brand car rental companies, offering customers a full range of rental options in the U.S. between the Hertz, Dollar, Thrifty and Advantage brands. Dollar Thrifty also has a strong international presence, complementing our global footprint, which enables us to utilize a recognized brand to accelerate our leisure rental strategy in Europe and other markets. Financially, we believe the deal is attractive, accretive to earnings and structured to maintain Hertz's strong credit profile. We've identified at least $180 million of synergies already, primarily in fleet, IT systems and procurement, enabling our companies to operate at an even lower cost," he added.

Scott L. Thompson, Dollar Thrifty's President and Chief Executive Officer, said, "The combination of Dollar Thrifty with a larger company like Hertz will provide Dollar Thrifty with greater resources and the technology needed to expand our value focused leisure brands. We see the combination of our brands with Hertz's brands as very compelling."

Under the terms of the definitive agreement, the $41.00 per share purchase price is comprised of 80% cash consideration and 20% stock consideration. The cash portion will be paid in two components; (1) a $200 million special cash dividend representing approximately $6.88 per share, to be paid by Dollar Thrifty immediately prior to the transaction closing and (2) $25.92 per share to be paid by Hertz at the closing. The stock is at a fixed exchange ratio of 0.6366 per share, based upon a Hertz common stock closing price of $12.88 per share on April 23, 2010. The $41.00 per share purchase price represents approximately a 19% premium to the 30-day average closing price of Dollar Thrifty's common stock. At the closing, Hertz will issue an aggregate of approximately 18 million shares of its common stock (excluding shares issuable upon the exercise of options that are being converted to Hertz options) and pay an aggregate of approximately $750 million in cash (excluding the special $200 million Dollar Thrifty dividend). Hertz intends to fund the cash portion of the purchase price with existing liquidity from the combined company. Hertz will also assume or refinance Dollar Thrifty's existing fleet debt, outstanding at closing. Upon the close of the transaction, Dollar Thrifty stockholders will own approximately 5.5% of the combined company on a diluted basis. Dollar Thrifty will become a wholly-owned subsidiary of Hertz and Dollar Thrifty common stock will cease trading on the NYSE.

The transaction is subject to customary closing conditions, regulatory approvals, approval by Dollar Thrifty stockholders and payment of the special dividend. The transaction is not conditioned on receipt of financing by Hertz.

Barclays Capital acted as lead financial advisor to Hertz and Bank of America Merrill Lynch also

provided advice. Hertz also worked with the law firms Debevoise & Plimpton LLP and Jones Day. Dollar Thrifty was advised by J.P.Morgan and Goldman, Sachs & Co. and the law firm of Cleary Gottlieb Steen & Hamilton LLP.

Hertz is the largest worldwide airport general use car rental brand operating from more than 8,200 locations in 146 countries worldwide. Hertz is the number one airport car rental brand in the U.S. and at 78 major airports in Europe, operating both corporate and licensee locations in cities and airports in North America, Europe, Latin America, Asia, Australia and New Zealand. In addition, the Company has licensee locations in cities and airports in Africa and the Middle East. Product and service initiatives such as Hertz #1 Club Gold(R), NeverLost(R) customized, onboard navigation systems, SIRIUS XM Satellite Radio, and unique cars and SUVs offered through the Company's Prestige, Fun and Green Collections, set Hertz apart from the competition. The Company also operates the Advantage car rental brand at 26 airports in the U.S., global car sharing club, Connect by Hertz, in New York City, Berlin, London, Madrid and Paris. Additionally, Hertz operates one of the world's largest equipment rental businesses, Hertz Equipment Rental Corporation, offering a diverse line of equipment, including tools and supplies, as well as new and used equipment for sale, to customers ranging from major industrial companies to local contractors and consumers from approximately 325 branches in the United States, Canada, China, France and Spain.

Through its Dollar Rent A Car and Thrifty Car Rental brands, Dollar Thrifty has been serving value-conscious travelers since 1950. Dollar Thrifty maintains a strong presence in domestic leisure travel in virtually all of the top U.S. and Canadian airports, and also derives a significant portion of its revenue from international travelers to the U.S. under contracts with various international tour operators. Dollar and Thrifty have approximately 300 corporate locations in the United States and Canada, with approximately 6,000 employees located mainly in North America. In addition to its North American operations, the Company maintains global service capabilities through an expansive international franchise network of over 1,250 franchises in 81 countries.

Conference Call Information

Hertz has previously announced that it plans on issuing a press release detailing its first quarter 2010 results prior to market open on Monday, April 26, 2010 and is scheduled to hold a conference call to discuss these results at 10:00 a.m. ET on Monday, April 26, 2010.

Conference Call Dial-In Information:

Time/Date:
10:00 a.m. ET, Monday, April 26, 2010

Phone:
(800) 230-1766 (U.S.)
(612) 332-0226 (International)

Conference Title:
Hertz First Quarter 2010 Earnings Call

Passcode:
153677

The call can be accessed by providing the title or passcode to the operator.

Hertz
Acquires
Dollar Thrifty

Dollar Thrifty
Automotive Group, Inc.

FORWARD LOOKING STATEMENTS

This communication contains statements that constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are based on Hertz Global Holdings, Inc.'s ("Hertz") and Dollar Thrifty Automotive Group's ("Dollar Thrifty") current expectations and beliefs and are subject to a number of risks, uncertainties and assumptions that could cause actual results to differ materially from those described in the forward-looking statements. All statements other than statements of historical fact are statements that could be deemed forward-looking statements. Risks, uncertainties and assumptions include the possibility that (1) the companies may be unable to obtain stockholder or regulatory approvals required for the merger; (2) problems may arise in successfully integrating the businesses of the two companies; (3) the acquisition may involve unexpected costs; (4) the businesses may suffer as a result of uncertainty surrounding the acquisition; and (5) the industry may be subject to future risks that are described in SEC reports filed by Hertz and Dollar Thrifty. Because forward-looking statements involve risks and uncertainties, actual results and events may differ materially from results and events currently expected by Hertz and Dollar Thrifty. Hertz and Dollar Thrifty assume no obligation and expressly disclaim any duty to update the information contained herein except as required by law.

ADDITIONAL INFORMATION ABOUT THE MERGER AND WHERE TO FIND IT

In connection with the proposed merger, Hertz and Dollar Thrifty will file relevant materials with the SEC, including one or more registration statement(s) that are expected to contain a prospectus of Hertz and a proxy statement of Dollar Thrifty. Investors and security holders are urged to read these documents (if and when they become available) and any other relevant documents filed with the SEC, as well as any amendments or supplements to those documents, because they will contain important information about Hertz, Dollar Thrifty and the Merger. Investors and stockholders will be able to obtain free copies of the proxy statement/prospectus and other documents containing important information about Hertz and Dollar Thrifty, once such documents are filed with the SEC, through the website maintained by the SEC at http://www.sec.gov. Copies of the documents filed with the SEC by Hertz will be available free of charge on Hertz's internet website at www.hertz.com or by contacting Hertz's Investor Relations Department at 201-307-2100. Copies of the documents filed with the SEC by Dollar Thrifty will be available free of charge on Dollar Thrifty's internet website at www.dtag.com or by contacting Dollar Thrifty's Investor Relations Department at 918-669-2119.

Hertz, Dollar Thrifty, their respective directors and certain of their executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Dollar Thrifty in connection with the proposed transaction. Information about the directors and executive officers of Hertz is set forth in its proxy statement for its 2010 annual meeting of stockholders, which was filed with the SEC on April 9, 2010. Information about the directors and executive officers of Dollar Thrifty will be set forth in its proxy statement for its 2010 annual meeting of stockholders, which will be filed pursuant to Regulation 14A promulgated by the SEC not later than April 27, 2010.

Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement/prospectus and other relevant materials to be filed with the SEC when they become available.

Transaction Terms & Structure

- Transaction has an equity purchase price of $1.3 billion with $956 million of cash consideration

Purchase Price

- $41.00 per share purchase price
- Equity value of $1.3 billion
- Corporate Enterprise Value of $932 million
- Gross Enterprise Value of $1.9 billion

Deal Structure

- Dollar Thrifty's existing fleet debt will be rolled over ($1.6 billion)
- Dollar Thrifty's corporate term loan will be paid down ($158 million)
- One-time $200 million pre-merger dividend will reduce cash consideration

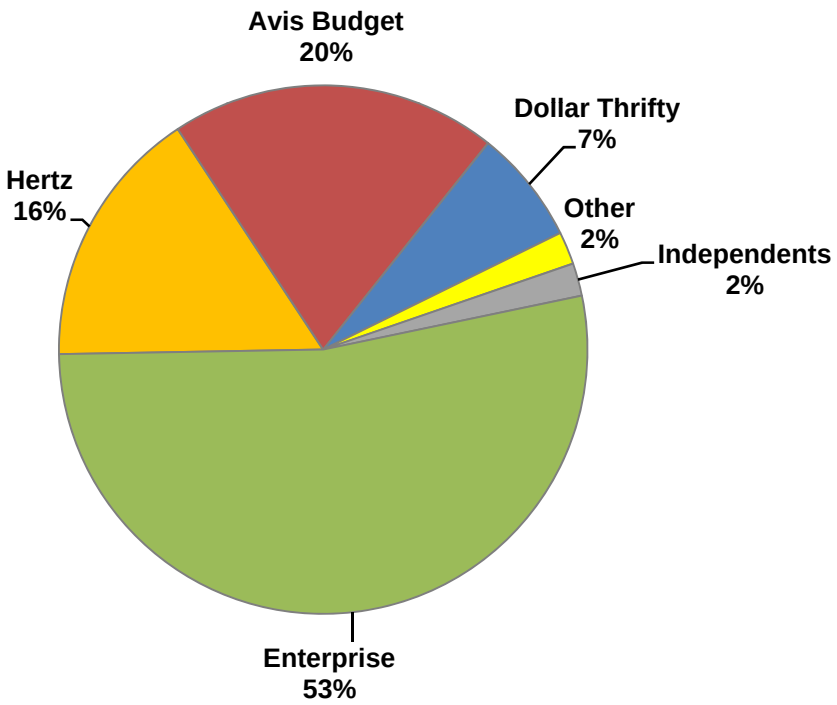
Financing

- Total cash consideration of $756 million post dividend
- Hertz equity of $317 million
- Intend to fund cash portion with existing liquidity

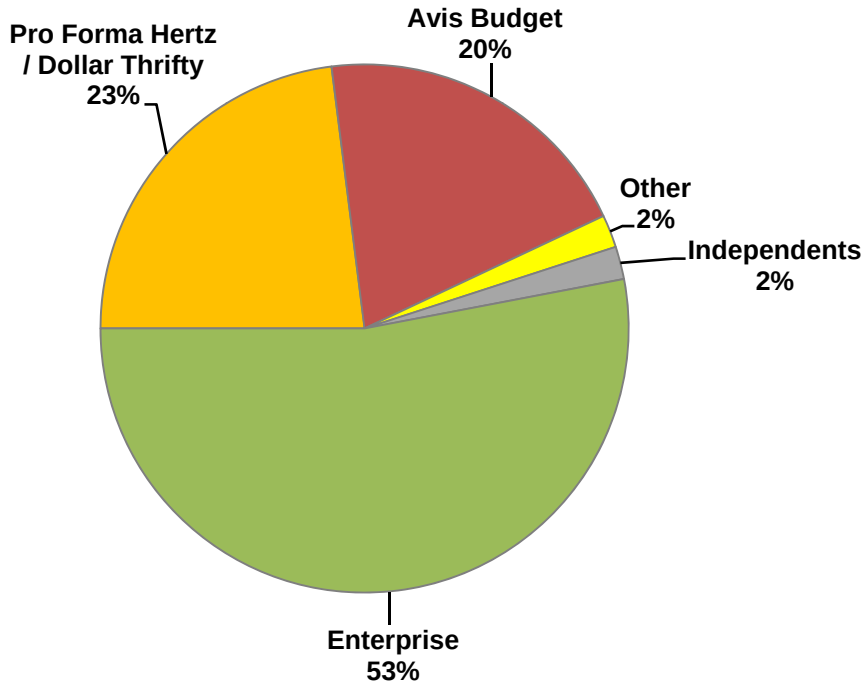
Acquisition Boosts Hertz's Market Position

Total U.S. Rental Car Market Revenue Share 2009

Status Quo



Pro Forma



Source: Auto Rental News, 2010 Fact Book

Highly Complementary Brands

Hertz

- Premier global brand
- Leading car rental provider in U.S. and Europe
  - #1 worldwide general use car rental brand
  - Strong premium brand in business and leisure sectors of the U.S. market
  - Best-in-class service reputation
  - Approximately 8,200 locations
- One of the largest equipment rental operators in U.S. and Canada combined based on 2009 revenues
  - Diversified revenue mix
  - Approximately 325 locations
- FY2009 Financial Summary
  - Revenues of $7.1 billion
  - Gross EBITDA of $2.9 billion
  - Corporate EBITDA of $980 million

Dollar Thrifty Automotive Group, Inc.

- Well positioned "value" player in the U.S. market
- Significant on-airport position and infrastructure
  - 12% of all airport revenues
  - Strong share of value rentals at certain key leisure airports
  - Strong partnerships with tour operators and travel agencies
- Approximately 1,558 locations
  - 298 corporate-owned locations
  - 1,260 franchisee locations (in 81 countries)
- FY2009 Financial Summary
  - Revenues of $1.5 billion
  - Gross EBITDA of $609 million
  - Corporate EBITDA of $99 million

A Multi-Brand Rental Car Leader

- Hertz will be able to enhance its portfolio with a “mid-tier value” brand and will achieve stronger middle tier airport brand

Hertz

- 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

Dollar Thrifty Automotive Group, Inc.

- 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

Advantage Rent A Car

- 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

connect by Hertz

- Next generation car rental in urban, university and corporate markets; significant scalability
- Competes against Zipcar, Enterprise, and international companies
- Platform for future, green rental concepts (e.g. electric cars)
- High-tech, high-touch customer service model

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

425 1 form425communication050310.htm INTERNAL COMMUNICATION

Filed by: Dollar Thrifty Automotive Group, Inc.
Pursuant to Rule 425 under the Securities Act of 1933 and deemed filed pursuant to Rule 14a-12 under the Securities Exchange Act of 1934
Subject Company: Dollar Thrifty Automotive Group, Inc.
Subject Company's Commission File No.: 1-13647

The following email was sent on behalf of Scott Thompson, Chief Executive Officer and President of Dollar Thrifty Automotive Group, Inc. ("Dollar Thrifty"), to employees of Dollar Thrifty on May 3, 2010.

Sent on behalf of Scott Thompson . . .

Well, we had quite a week last week. Not only was there news of Hertz's intention to purchase Dollar Thrifty, but we also announced the best 1st Quarter earnings in our company's history. Basically, great short term news and uncertain long term news. That's a lot to digest in a single month, let alone the same week. Until we file some SEC documents (S-4), I am limited as to what I can say about the proposed transaction, but we will get those documents filed in the next 30 days or so.

Consolidation in the car rental industry is something that's been talked about for years. The headlines we saw last week, however, are not something we'd probably expected to see staring at us from our morning newspaper or computer screen:

- **Hertz to buy Dollar Thrifty for $1.27 billion (*Tulsa World)***
- **Hertz agrees to buy rival Dollar Thrifty car rental for $1.17B (*USA Today*)**
- **Everybody's happy as Hertz carpools with Dollar Thrifty (*Forbes.com*)**
- **Hertz acquisition proposal described as a 'perfect fit (*The Oklahoman*)**
- **Analysts like combo of car rental firms (*Tulsa World*)**

Not to mention our stock price trading over the purchase price, and litigation claims against directors and officers of the company. (This is normal and expected in these types of proposed transactions).

To some it's a bit surreal and at the very least unsettling. For many, that will be an understatement, and I understand your concern. It's pretty clear to me that working at Dollar Thrifty has never been "just a job" or a paycheck. It's hard work fueled by passion, camaraderie and a feeling that we're all in this thing together.

We are going to set up a communication channel for you to ask questions and to give us a way to send you information regarding our path, once we know more. I expect it will be 30 to 60 days before I will have any additional feel for shareholder approval, regulatory approval or Hertz's integration thoughts. Again, sorry for the uncertainty last week has caused in your life.

We have had several owners in our history and Dollar Thrifty has always just kept on performing. We have kept on taking care of customers, kept on working together and kept on succeeding. That is what I expect our future to be.

Scott

P.S. **It is business as normal**. We are hiring. We are making investments in your company. We are competing against ALL competitors, including Hertz and Advantage. We are aggressively going after Tour accounts (hopefully some good news on this very soon) and we are working on getting you a great group of 2011 model vehicles.

425 1 form425talkingpoints.htm TALKING POINTS COMMUNICATION

Filed by: Dollar Thrifty Automotive Group, Inc.
Pursuant to Rule 425 under the Securities Act of 1933 and deemed filed pursuant to
Rule 14a-12 under the Securities Exchange Act of 1934
Subject Company: Dollar Thrifty Automotive Group, Inc.
Subject Company's Commission File No.: 1-13647

Talking Points

TOPIC	POINTS
What is being announced today?	•That Hertz Global Holdings, Inc. and Dollar Thrifty Automotive Group have signed a definitive agreement providing for Hertz to acquire Dollar Thrifty for a purchase price of $41.00 per share, in a mix of cash and Hertz common stock, based on Friday's closing stock price.
What are the specific financial terms of the acquisition?	•Refer employees to the Hertz press release.
Were we trying to sell the company? Do we think this transaction is in the best interest of our shareholders?	•We were not for sale, but as we have told you in the past, our Board of Directors is legally obligated to do what is in the best interest of the Company and its shareholders. Last Wednesday morning, Hertz made an unsolicited proposal to us and during the course of the week; we and they agreed on a transaction that our Board is recommending to our shareholders for approval. Management supports that decision. We will get access to more resources, including greater technology, and a broader base of revenues, that will allow us to provide improved services and grow more rapidly than as a standalone company. We are confident that it is Hertz's intention to grow our brands in the years ahead.
Why would Hertz want to buy Dollar Thrifty?	•Our understanding is that Hertz as a brand wants to maintain their premium service and attention to the business customer. Hertz has had as one of their top strategic objectives to grow their presence in the value market on the leisure side of car rentals. Dollar and Thrifty serve customers in the "value" markets; our customer base is not a significant competitor of, or in the same markets as Hertz or Advantage. DTG's brands compete directly against Enterprise, Alamo and Budget. The acquisition of DTG gives them an immediate and large customer base in the mid-tiered value segment. •Advantage primarily competes in another segment of the leisure market – those customers who are primarily price focused and less concerned about frills –against operations such as Payless, Fox and numerous other rental car companies. Their strategies will continue to include growing Advantage. •DTG also has operations in the off-airport business, which allows Hertz further market penetration into that growing segment.
What will Hertz do with the Dollar Thrifty brands?	•Our understanding is that Hertz's intention is to position Dollar and Thrifty between Hertz and Advantage, enabling the combined companies to compete even more effectively against other multi-brand competitors. The transaction also supports the expansion plans of Hertz internationally – particularly their European leisure strategy. Hertz expects to continue to operate both the Dollar and Thrifty brands, which have market strengths separate and apart from their own. Together, we will compete even more effectively against all other rental companies, including the other multi-brand rental companies, and serve every segment of the U.S. market. All of this said, post closing, all of these types of decisions would rest with Hertz.
Is it certain that the transaction will be completed? How long might it take?	•Certain things have to happen before there can be a transaction. If both items below are not completed successfully, there cannot be a transaction: 1. Our shareholders must approve the proposed transaction. 2.Regulatory authorities must approve the proposed transaction. Given the nature of our industry, this could take from 6 months to a year. Hertz is targeting to have it approved during the second half of 2010. •There is no assurance that this transaction can be completed as the required approvals may not be obtained. In addition, the process allows for other offers.
What happens between now and the closing of a transaction?	•We don't expect anything to change during this period of uncertainty in the way we operate. We will be working with Hertz to develop a long term integration plan that would be implemented if the proposed transaction is approved by all parties. Your leadership team is in

	place and it will be business as normal. You should expect during this period of uncertainty that we will continue to compete aggressively in the marketplace against all of the players in the industry. As previously communicated, raises and promotions are expected in the fourth quarter and you should know we are performing way ahead of our financial goals for 2010. We will continue to make investments in the business and stay focused on our customers.
What should we do as employees?	•Stay focused on our objectives and keep performing. •Understand that this will be a difficult period. Although we cannot currently answer all of your questions about what will happen in the future or how this might impact you. The best course of action is for all of us to continue to do our jobs.
What can we expect in terms of communication going forward?	•We will keep you informed as the situation develops.

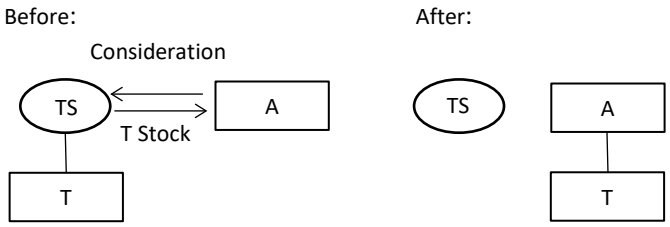
SOME OBSERVATIONS ON THE 2010 HERTZ/DOLLAR THRIFTY DEAL

Deal structures

There are three basic forms for a business combination: stock acquisitions, asset acquisitions, and mergers.

Stock acquisitions. In a stock acquisition, the acquiring company, either directly or through a subsidiary, acquires the target company's stock from the target company's shareholders in consideration for some payment.

Stock Acquisition



where T Target firm
TS Target firm's shareholders
A Acquiring firm

Since the acquiring company deals directly with the target firm's shareholders, the target firm itself does not have to be a party to the transaction even though its ownership is changing hands. Moreover, only the ownership of the target company changes. There is no assignment of assets, so franchise arrangements, licenses, and contracts with third parties would continue without triggering any anti-assignment or change of control provisions.[1] At the same time, all of the target company's liabilities will stay with the target, including liabilities that may not be known to the acquiring company. If, however, the corporate formalities are properly observed so that the

1. In an assignment of a contract, for example, one party transfers its rights and obligations under the contract to a third party, who would then "step into the shoes" of the assigning party and so become a party to the contract in place of the assigning party. Not surprisingly, many contracts have *anti-assignment provisions* that prevent such a transfer and assures each party that the counterparty will remain the person who originally signed the contract. Since a stock acquisition does not change the juridical character of the acquired firm, there are no assignments of its contracts and hence no triggering of any anti-assignment restrictions. However, some contracts may contain a *change of control provision* that allows one party to the contract to terminate the contract in the event the control of the counterparty changes from what it was at the time of the signing.

corporate veil will not be pierced, the acquiring company as a shareholder will not be responsible for these liabilities.

In a closely-held company (that is, a company with relatively few shareholders), the acquiring company may effect a stock acquisition by signing and closing on stock purchase agreements with each shareholder. A typical example would be the sale by a parent company of a wholly-owned subsidiary. In a more dispersed company, it may be impracticable for the acquiring company to reach agreements with each of the individual shareholders of the target company. If the target company is a publicly traded corporation, a stock acquisition may be effected through a *tender offer*, which is an open offer by the acquiring company to all of the target's shareholders to tender their stock for sale at a specified price during a specified time. The acquiring company may condition its offer to the tendering of a minimum or maximum number of shares. If the number of shares falls outside this range, the acquiring company will not be committed to purchasing any of the shares that the target's shareholders tendered pursuant to the offer. Tender offers for publicly traded companies are governed by the Williams Act,[2] which, among other things, governs the length of time the tender offer must be held open, procedures for modifying a tender offer once it has been commenced, insider trading in connection with tender offers, and whether one class of shareholders may receive preferential treatment over another class of shareholders. The Williams Act also requires the offeror to make certain public disclosures on a Schedule TO to be filed with the Securities and Exchange Commission upon the commencement of the tender offer, including (1) a term sheet summarizing the material terms of the tender offer in plain English; (2) the target's identity; (3) the tender offeror's identity and background; (4) the tender offeror's history with the target company; (5) the purpose of the tender offer and the plans or proposals of the bidder for the target; (6) the source of funds or other consideration for the purchase of securities; and (7) financial information concerning the bidder if it is material to the decision of a target's shareholders whether or not to tender (as when the offeror is offering its stock as part of the tender offer consideration).[3]

If an acquiring company acquires some but not all of the shares of the target company through a stock acquisition, it is often possible for the acquiring company to then acquire a 100 percent interest in the target through a *squeeze-out* or *short-form merger*. Under Delaware law, for example, a parent corporation owning 90 percent or more of each class of stock in a subsidiary may merge with the entity and force the minority shareholders out for a fair value cash buyout.[4] Delaware courts have held that the only recourse for a minority shareholder in a short-form merger, absent fraud or illegality, is appraisal (that is, a determination of the fair value for the cash buyout).[5]

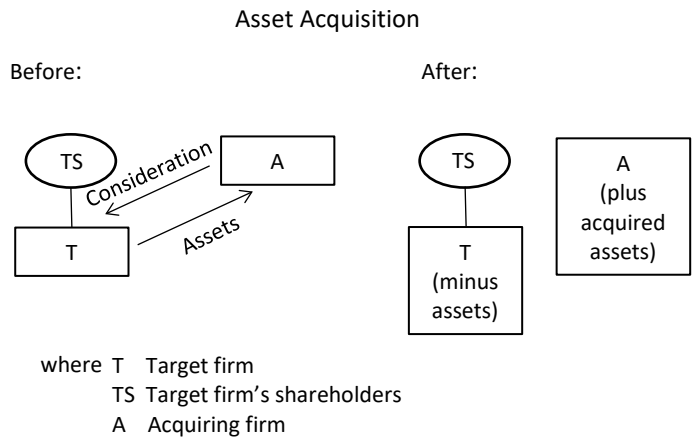
2. Pub. L. No. 90-439, 82 Stat. 455 (July 29, 1968). The Williams Act added six sections to the Securities and Exchange Act, 15 U.S.C. § 78a et seq., to regulate tender offers and accumulations of stock.

3. *See* 17 C.F.R. 240.14d-100–Schedule TO.

4. *See* DEL. CODE ANN. tit. 8, § 253(a).

5. *See* Glassman v. Unocal Exploration Corp., 777 A.2d 242, 243 (Del. 2001).

Asset acquisitions. In an asset acquisition, the acquiring company purchases some or all of the assets, and perhaps assumes some or all of the liabilities, of the target company. The target company remains in existence with whatever assets and liabilities that have not been transferred to the acquiring company plus whatever consideration it received from the acquiring company in connection with the acquisition.



Assets can be *tangible*, such as plant, property, and equipment, or *intangible*, such as intellectual property, the corporate name, and goodwill. Unlike a stock acquisition, an asset acquisition can allow the parties to be selective in the assets and liabilities to be acquired. So, for example, if the target company has debt that the acquiring company does not assume, the target company—which remains behind as a legal entity—will still be liable for the debt after the asset acquisition has closed. By purchasing assets rather than stock, the acquiring firm also avoids the problems presented in stock acquisitions, such as minority shareholders who refuse to sell their shares and (oftentimes) the requirement of approval by the target's shareholders. Usually, a shareholder vote will be required only if all or substantially all of the target's assets are being sold. If a shareholder vote is required, then usually holders of at least 50% of the seller's outstanding ownership interests must approve the transaction.[6] In addition, some assets, such as licenses, franchises, or contracts with anti-assignability provisions cannot be transferred through an asset acquisition without the counterparty's consent.

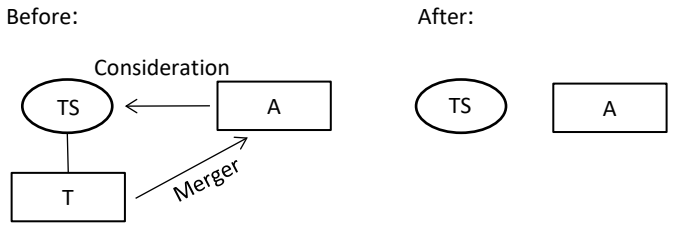
Mergers. A merger is a business combination that occurs by operation of the applicable state corporation law whereby two corporations are combined into a single corporation (called the *surviving corporation*). In Delaware, for example, a merger is effected by the execution of an agreement of merger by the merging corporations, approval of the agreement by the board of directors of each of the merging companies, approval of the agreement by the requisite vote of the shareholders of the merging

6. The actual approval threshold will be determined by the applicable state law, the target company's charter, and the terms negotiated into the merger agreement by the acquiring and acquired companies.

parties, and the filing of a *certificate of merger* by the surviving corporation with the Delaware secretary of state.[7]

The simplest merger is a *direct statutory merger*, where the target corporation is merged directly with and into the acquiring corporation:

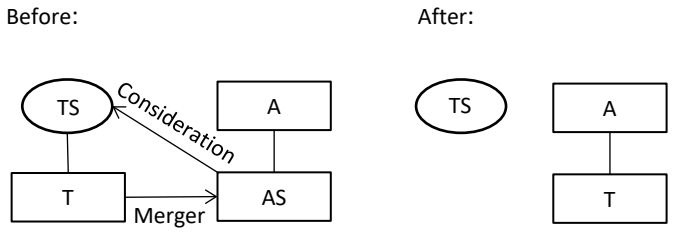
Statutory Merger



where T Target firm
TS Target firm's shareholders
A Acquiring firm

One difficulty with a direct statutory merger is that the acquiring company, as the surviving corporation, becomes responsible for any liabilities of the target company. A solution is for the acquiring company to create a new subsidiary to be the merger party. This merger structure, called a *reverse triangular merger*, is a publicly traded corporation's most common form of merger. The 2010 Hertz/Dollar Thrifty deal was structured as a reverse triangular merger. The acquiring corporation creates a new wholly-owned acquisition subsidiary, which it capitalizes in an amount sufficient to pay the merger consideration to the target's shareholders and other expenses related to the transaction.

Reverse Triangular Merger



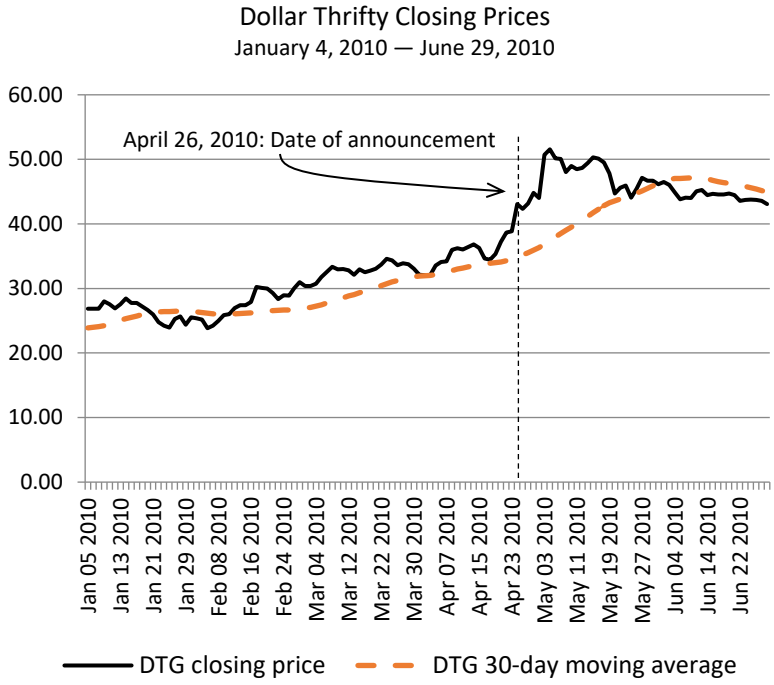
where T Target firm
TS Target firm's shareholders
A Acquiring firm
AS Acquisition subsidiary

7. This is the procedure for merging two Delaware corporations. *See* DEL. CODE ANN. tit. 8, § 252.

On the effective date of the merger, the acquisition subsidiary merges with and into the target corporation. The target company becomes the surviving corporation, which is now a wholly-owned subsidiary of the acquiring company. At the same time, the stock held by the target's shareholders is converted by operation of law into a right to receive the merger consideration. The merger requires approval by the target's shareholders as well as by the acquiring company as the sole shareholder of the acquisition subsidiary. The acquiring company's shareholders need not approve the merger unless the acquisition is material or more shares must be authorized to complete the transaction. A reverse triangular merger has the advantage of isolating the liabilities of the acquired company in a subsidiary corporation and away from the acquiring corporation. It also generally preserves the contracts the target has with third parties, which will often have anti-assignment clauses that may prevent the transfer of the rights under the contract under forms of business combination where the target company ceases to exist.

Preannouncement run-up in Dollar Thrifty stock prices

There is often a substantial target stock price run-up before the announcement of a takeover bid or acquisition.[8] We can see a significant run-up in Dollar Thrifty's stock



8. *See, e.g.,* Zhenyang Tang & Xiaowei Xu, *What Causes the Target Stock Price Run-Up Prior to M&A Announcements?*, 16(6) J. ACCT. & FIN. 106 (2016) (surveying the relevant studies conducted over the last four decades). For other studies, ss, for example, Marie Dutordoir, Evangelos Vagenas-Nanos, Patrick Verwijmeren & Betty Wu, *A Rundown of Merger Target Run-Ups*, 50 FIN. MGMT. 487 (2021); Patrick Augustin & Marti G. Subrahmanyam, *Informed Options Trading before Corporate Events*, 12 ANN. REV. FIN. ECON. 327 (2020); Patrick Augustin, Menachem Brenner &

closing price prior to the deal announcement date on April 26, 2010. Recall that Hertz contacted Dollar Thrifty in December 2009 to restart negotiations.

Closing Price Changes
(compared to prior months)

	1-month	2-months	3-months
DTG	24.5%	51.8%	73.7%
DJIA	2.9%	9.0%	10.1%

The usual explanation for the price run-up is that information about the pending transaction is leaking into the marketplace, perhaps due to trading on inside information. In some cases, however, the run-up may be due simply to serendipitous speculation by sophisticated investors. In a recent study, Tang and Xu, after surveying the literature and conducting their own empirical analysis, conclude that the run-up is strongly associated with proxies of unreported insider trading. They find that the preannouncement price run-up is significantly greater when media attention on insider trading is lower, when institutional ownership is lower, and when the probability of informed trading is higher, suggesting that preannouncement run-ups are mainly caused by noncorporate insiders not subject to SEC reporting requirements.[9]

The deal price

Depending on the deal's structure, the purchase price may be expressed in one of two ways: (a) the value of the consideration paid per share of the target's stock or (b) the total value of consideration for all of the target's stock. When the target's shareholders directly receive consideration for their shares, say in a stock purchase transaction where the stock will be purchased directly from the shareholders or in a merger, the agreement will express the purchase price on a per-share basis. By contrast, if the transaction involves the sale of a wholly-owned subsidiary, whether as a stock or asset acquisition, the agreement will express the purchase price as the aggregate price the parent company will pay the seller for the purchase of its subsidiary.

The 2010 Hertz/Dollar Thrifty deal involved a merger under the Delaware General Corporation Law, whereby HDTMS Inc., a wholly-owned subsidiary of Hertz, would merge into Dollar Thrifty. As a result, by operation of law, Dollar Thrifty would

Marti G. Subrahmanyam, *Informed Options Trading Prior to Takeover Announcements: Insider Trading?*, 65 MGMT. SCI. 5697 (2019); Anup Agrawal & Tareque Nasser, *Insider Trading in Takeover Targets*, 18 J. CORP. FIN. 598 (2012);, Gregg A. Jarrell & Annette B. Poulsen, *Stock Trading before the Announcement of Tender Offers: Insider Trading or Market Anticipation?*, 5 J. L. ECON. & ORG. 255 (1989); Arthur J. Keown & John M. Pinkerton, *Merger Announcements and Insider Trading Activity: An Empirical Investigation*, 36 J. FIN. 855 (1981) (seminal paper); *but see* Angelo Aspris, Sean Foley & Alex Frino, *Does Insider Trading Explain Price Run-Up Ahead of Takeover Announcements?*, 54 ACCT. & FIN. 25 (2014).

9. Tang & Xu, *supra* note 8, at 107.

become a wholly-owned subsidiary of Hertz, and the Dollar Thrifty shareholders would be entitled to receive the purchase price for each of their shares.[10] The purchase price was $41.00 per share, 80 percent of which would be cash and 20 percent in Hertz stock.

Interestingly, not all of the cash component of $32.80 was to be paid by Hertz. Under the merger agreement, Dollar Thrifty would pay a special cash dividend totaling $200 million from the Dollar Thrifty treasury to the Dollar Thrift shareholders, representing approximately $6.88 per share, to be paid immediately prior to the transaction. So Hertz only paid approximately $25.92 per share in its own cash, although the company it purchased was worth $200 million less due to the special dividend.

The parties set the stock component at $8.20. To attain this value, the parties looked at the closing price of $12.88 per share for Hertz stock on April 23, 2010, the last business day before the announcement and calculated the fraction of a share valued at $8.20. Accordingly, the agreement fixed an exchange ratio of 0.6366 shares of Hertz stock for every share of Dollar Thrifty stock to provide the Dollar Thrifty shareholders with $8.20 worth of Hertz stock for each Dollar Thrifty share as of the signing.

Consideration To Be Paid Per Share for Dollar Thrifty Stock

$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

The Dollar Thrifty special cash dividend, undoubtedly driven by tax considerations, is an interesting feature. It implies that a little over 29 million shares of Dollar Thrifty stock outstanding would be converted in the merger.[11] This, in turn, implies that the deal's total value was around $1.2 billion at $41 per share, just as the press reported. It also implies that the Dollar Thrifty shareholders would receive about $953 million in cash, and that Hertz's cash contribution would be around $753 million.

The Dollar Thrifty shareholders would also receive about 18.5 million shares of Hertz stock. The Hertz press release reported that, as a result of the stock component of the deal, the former Dollar Thrifty shareholders would own about 5.5 percent of the combined company.

10. Agreement and Plan of Merger by and among Hertz Global Holdings, Inc. HDTMS, Inc. and Dollar Thrifty Automotive Group, Inc. § 1.01 (Apr. 25, 2010).

11. Dollar Thrifty's Form 10-K filed for 2009 stated that it had 28,597,079 shares outstanding as of February 24, 2010. *See* Dollar Thrifty Automotive Group, Inc. Form 10-K for the Fiscal Year Ended December 31, 2009, at 1 (filed March 4, 2010).

Deal premiums

In the Hertz press release, Hertz stated that its equity purchase price of $41 per share "represents approximately a 19% premium to the 30-day average closing price of Dollar Thrifty's common stock." In almost all deals, the buyer pays a price significantly above the price of the target's stock in the period just before when the stock price is affected by the prospect of an acquisition. The difference between the target's "unaffected stock price" and the deal price is known as the *deal premium* (sometimes called a *bid premium*, a *merger premium*, or, more generally, a *control premium*[12]). In principle, a deal premium for the target's stock is calculated with the following formula:

$$\frac{\text{Purchase price - Unaffected price}}{\text{Unaffected price}}$$

where the "unaffected price" is the price of the target's stock immediately before the stock price is affected by information—insider or otherwise—about the merger or acquisition.

From our prior discussion of the preannouncement run-up of the target's stock and some of the complexities of the purchase price, an accurate calculation of a deal premium can be fraught with difficulty. As a practical matter in reporting deal premiums in news releases and the like, companies often resort to a proxy for the unaffected price, such as the closing price a certain time in advance of the merger or, as in the case of Hertz/Dollar Thrifty, the 30-day moving average of the target's closing price the day before the merger announcement.

Some financial data companies, such as FactSet, attempt to identify a more accurate unaffected price using their analytics. FactSet reported in its Control Premium Study for the first quarter of 2020 that of the 28 domestic deals it tracked with positive control premiums, the average premium was 47.1 percent and the median deal premium (probably the better number to use) was 33.7 percent.[13] In another study, the Boston Consulting Group (BCG)

12. Technically, a control premium is the premium paid when an acquiring company acquires 50.01 percent or more of the target company. Factset defines a control premium as "the additional consideration that an investor would pay over a marketable minority equity value (i.e., current, publicly traded stock prices) in order to own a controlling interest in the common stock of a company." Factset Mergerstat Control Premium Study—1st Quarter 2020, at 3 (2020). In a strategic transaction—the type of deal in which we are interested—the control premium has two components: (a) the value of pure control, and (b) the synergy value from the combination that is captured by the seller in the negotiation process. Keep in mind that if the buyer holds less than 100 percent of the target, the synergies from an acquisition may be diminished because the buyer, who will have fiduciary duties to the minority shareholders and cannot engage in self-dealing, may be limited in the extent to which it can coordinate with the acquired firm.

13. *See id.* at 4 (2020). Recall that the median is the value at the midpoint of a frequency distribution of observed values, so that the number of observations with a lower value is equal to the number of observations with a higher value. The advantage of a median over an average is that an average is sensitive to outliers in the distribution with large values while the median is not. For example, consider a frequency distribution with five values: 1, 3, 3, 3, and 50. The average is 12; the median is 3.

Importantly, Factset calculates the control premium at the time of closing, not at the time of announcement. For our purposes, the time of announcement is the better date, so the Factset numbers

looked at a sample of 286 transactions valued at over $500 million between 2010 and 2015. BCG found that the average deal premium for this sample was 34 percent.[14] Control premiums can vary considerably over time and across deals. In the second quarter of 2020, for example, Factset found that the control premium (excluding negative premiums) in domestic deals averaged 106.4 percent, with a median of 47.5 percent.[15] The following table gives the Factset median control premium since 2010:

Median Control Premium[16]

Year	Control premium
2010	33.0%
2011	32.7%
2012	37.6%
2013	31.9%
2014	26.9%
2015	32.1%
2016	31.4%
2017	27.1%
2018	26.0%
2019	28.3%
2020	43.9%
2021	30.0%
2022	39.2%
2023	33.6%

are not quite what we would like to use but, when the negative control premia are excluded, are still useful as a proxy.

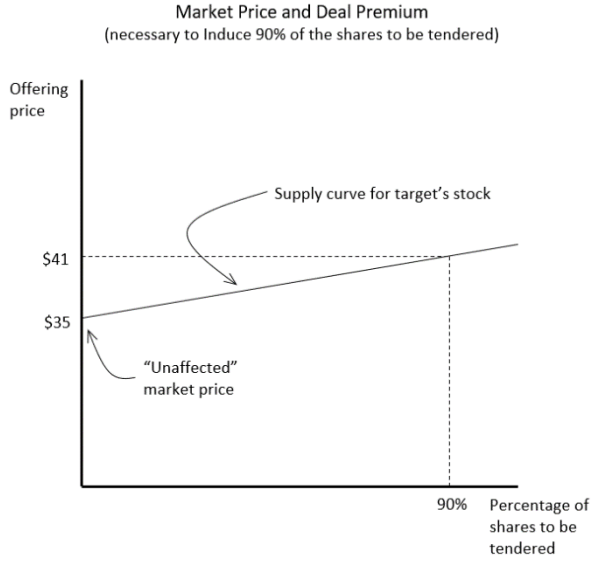
14. *See* Boston Consulting Group, The Real Deal on M&A, Synergies, and Value (Nov. 16, 2016), https://www.bcgperspectives.com/content/articles/merger-acquisitions-corporate-finance-real-deal-m-a-synergies-value/. For its premium calculations, BCG used as a proxy for the unaffected price the target's stock price 30 days prior to the announcement of the deal.

15. Factset Mergerstat Control Premium Study—2nd Quarter 2020, at 4 (2020). When the control premium is calculated at the time of closing rather than the time of announcement, negative control can exist in stock deals with fixed exchanged ratios where the buyer's stock has fallen between the time of announcement and the time of closing. For example, if the buyer is public and paying with its own stock, the buyer's stock price may have decreased between the announcement and the time the deal closes. This happened when in 2008 when Bank of America acquired Merrill Lynch in the beginning of the financial crisis. On September 12, 2008, the business day before the signing, the Bank's stock price closed at $33.74 and Merrill's stock closed at $17.05, implying a deal value of $29 per share of Merrill's stock and a deal premium of 70.0 percent. On December 31, 2008, the business day before the closing, the Bank's stock closed at $14.08 and Merrill's stock closed at $15.83, which implies a deal price of $12.08 and a control premium of -23.6 percent. *See generally* Robert J. Rhee, *Case Study of the Merger between Bank of America and Merrill Lynch* (University of Maryland Legal Studies Research Paper No 21 (2010).

16. The data in this table comes from two different sources that are not quite comparable. For years 2010-2018: Factset Mergerstat Control Premium Study—2nd Quarter 2020, at 7 (2020) (including negative premiums—Factset did not give a time series that excluded negative premiums). For years 2019-2023: 2024 Factset Review 46 tbl. 1-20 (median premium offered for deal totaling $100 million or more, excluding negative premiums and premiums over 250%).

Why do buyers have to pay a deal premium? Here are two of the primary reasons.

An upward-sloping supply curve. Consider a stock that is trading for $35 per share. Who holds the stock? Persons who value the stock at $35 per share or more. In a *tender offer*, where the offeror seeks to purchase the stock directly from stockholders, the offeror must offer more than $35 per share or no one will tender their shares. How much more the offeror must offer depends on what percentage of the target's outstanding shares the offeror hopes to acquire and the *reservation prices* of the stockholders (that is, the price at which the stockholder would be willing to sell). Some stockholders may value the stock at $35.05 and would be willing to sell for a slight uptick in the market price. Other stockholders may expect a significant jump in the stock price in the future and value the stock today at $40 or $45. The reservation prices of all shareholders map out an upward-sloping supply curve for the target's stock. Since the Williams Act, which regulates tender offers, requires equal treatment of all stockholders,[17] the offeror must offer a price that induces enough of the target's shareholders to tender their shares to reach the percentage of the target's shares the offer seeks to acquire. For example, in the following diagram, the offeror would have to offer a price of $41 per share to induce shareholders to tender 90% of the target's outstanding stock. Likewise, in a *merger*, where the combination is effected under state law by a vote of the shareholders, the shareholders will not ratify a deal that does not provide consideration above the reservation price of shareholders holding the number of shares required to pass the merger resolution.



17. *See* Rule 14d-10(a), 17 C.F.R. § 240.14d-10(a) ("No bidder shall make a tender offer unless: (1) The tender offer is open to all security holders of the class of securities subject to the tender offer; and (2) The consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer.") (implementing 15 U.S. Code § 78n(d)). This is commonly known as the *all holders/best-price rule*.

The bargaining game over value gain. The supply curve explanation, while valid, assumes that shareholders are passive price-takers who do not act strategically. But the target's shareholders, whether acting directly or more likely through the target's board of directors, can act strategically in a bargaining game with the acquirer to obtain some—and sometimes a large part—of the gain the acquirer expects the combination to generate.

If an acquiring firm is acting rationally, it will want to make an acquisition only if it believes its shareholders will be better off with the acquisition than without it. The target will have some going concern value V_c.[18] In its investor presentation, Hertz set the going-concern value of Dollar Thrifty to be $932 million.[19] But if the target in the hands of the acquiring company is only worth its going concern value, the acquirer's shareholders would be no better off with the acquisition than they would have been by keeping the money and foregoing the transaction. For the acquisition to make economic sense to the acquirer, there must be some additional gain to the acquirer from the acquisition beyond the target's going concern value. This gain can come from three sources:

1. *Synergies*. Synergy is the gain realized from the incremental cash flow generated by the combination of the acquirer and the target. *Operating synergies* can come, for example, from the elimination of duplicative costs (the combined company does not need two CEOs or two headquarters buildings), economies of scale or scope (one factory or one sales force may be able to handle the production and sales of both companies), or the combination of complementary technical assets and skills (the combined company may be able to produce products with lower costs or better products faster). *Financial synergies* can come, for example, from lowering the cost of capital (the combination, perhaps because of diversification, may present a lower financial risk to lenders), and tax benefits (the combination may reduce tax burden through increased depreciation charges, stepped-up basis in the target's assets, or from the combined firm having, and tapping into, increased debt capacity).
2. *Control benefits*. Oftentimes, the acquirer's management believes that it can run the target, even as a standalone company, in a manner that will result in more profitable utilization and deployment of the target's assets.
3. *Enhanced market power*. Some mergers and acquisitions will enable the combined company to exercise market power to raise prices without any corresponding increase in the cost of production or the quality of the

18. Going-concern value is the value of a company as an independent, ongoing business entity. Going concern value includes both the value of the company's tangible assets if the company is liquidated (liquidation value) plus the present discounted value of the company's intangible assets. Intangible assets include nonphysical assets, such as the company's reputation and intellectual property, that are likely to contribute to the company's cash flow.

19. Hertz Global Holdings, Inc., Investor Presentation, Hertz Acquires Dollar Thrifty 4 (Apr. 26, 2010). This value appears to exclude the $200 million that Dollar Thrifty would pay out of its treasury to its shareholders in a special cash dividend as part of the deal.

> product. One possibility is that the combination so reduces the number of competitors serving customers in the market that the resulting market price equilibrium will be higher postmerger than it was premerger, thereby increasing profits to the combined company through higher margins. Another possibility is that the transaction will enable the combined firm to foreclose its competitors from an important input (such as a necessary component) or output (such as a critical distribution channel) or at least raise the price of access, again reducing competition in the market and allowing the combined firm to increase its profits through higher prices and higher margins.

Call the present value of this expected gain from the merger or acquisition, whatever the source, V_g. Keep in mind that this gain is what the acquirer's management *expects* at the time when the acquisition is being negotiated; the reality of what gain the acquiring company might actually achieve postmerger could be quite different.

Particularly in the case of synergies, the increase in cash flow from the acquisition is often expressed in recurring dollars per year. In the 2010 Hertz/Dollar Thrifty deal, for example, Hertz management reported in the investor presentation that it expected at least $180 million of annually recurring synergies from the combination.[20] These long-run recurring gains are sometimes called *run-rate synergies*. If we ignore any costs that may be incurred to obtain the synergies and any transition period as the synergies ramp up and assume that this improvement in cash flow will last indefinitely, then we can calculate the present value of the synergies through the following formula:

$$V_g = \frac{A}{r},$$

where A is the value of the annually recurring cash flow improvement and r is the appropriate discount rate to account for the time value of money (i.e., a dollar next year is worth less to the company than a dollar today).[21] Some companies may use their weighted average cost of capital (WACC)[22] as the discount rate with the idea that

20. Hertz Global Holdings, Inc., Investor Presentation, Hertz Acquires Dollar Thrifty 8 (Apr. 26, 2010).

21. This is the formula for the present value of a *perpetual annuity* of an amount A with a discount rate r.

22. The weighted average cost of capital is a firm's average cost of financing its assets through its mix of debt and equity. The WACC tells you how much the company would have to pay on average to all of its debt and equity security holders for each dollar it finances. *See generally* Pablo Fernandez, *WACC: Definition, Misconceptions, and Errors*, 29 BUS. VALUATION REV. 138 (2010); Aswath Damodaran, The Cost of Capital: Misunderstood, Misestimated and Misused! (undated). If you prefer YouTube videos, try Learn To Invest, What is WACC—Weighted Average Cost of Capital?.

Some web sites, including valueinvesting.io, provide WACC data for companies. I have no idea how reliable this data is. With the increase in the Fed interest rates in recently, it is not surpring that the average WACC is increasing. GuruFocus reports that, on August 8, 2024, the average WACC for S&P companies was 10.7%. *See* GuruFocus.com, SPGI (S&P Global) WACC.

if they are investing in cash flow improvement, they would have to pay their WACC to finance it.

Suppose that Hertz's WACC is the appropriate discount rate to use and that in 2010 it was 7 percent. Then,

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

Now some might think (not unreasonably) that valuing a cash flow improvement as if it were a perpetual annuity is a bit extreme and that a better valuation would be as a fixed annuity over, say, ten years. There is a formula for that:

$$V_g = A\left[\frac{1-(1+r)^{-n}}{r}\right],$$

where n is the number of years to be considered.[23] Using the same numbers as before for Hertz but calculating the present value for a 10-year period yields:

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

which is still a significant number.

Using the 10-year calculation, the expected total value V_t of the Dollar Thrifty acquisition to Hertz, not counting what it would have to pay, would be:

$$\begin{aligned} V_t &= V_c + V_g \\ &= \$932 \text{ million} + \$1.264 \text{ billion} \\ &= \$2.196 \text{ billion,} \end{aligned}$$

assuming that Hertz paid all cash for the acquisition (in which case Hertz shareholders would receive all of the gain). But Hertz did not pay all cash: the Hertz consideration was a combination of cash and stock, so the Hertz shareholders would only receive a pro rata share of the total value. At the time of the deal announcement in 2010, Hertz had about 320 million shares outstanding.[24] As part of the acquisition consideration, Hertz would issue 18 million shares to Dollar Thrifty shareholders. If the deal closed, the original Hertz and former Dollar Thrifty shareholders would own about

23. You can use this formula if you wish, but the easier alternative is to use the PV function in Excel or a financial calculator.

24. *See* Hertz Global Holdings, Inc., Form 10-K for the Fiscal Year Ended December 31, 2006, at 1 (filed Mar. 30, 2007) (shares outstanding as of March 27, 2007).

94.5 percent and 5.5 percent, respectively, of the combined company.[25] Consequently, the total value to the original Hertz shareholders of the deal would be 94.5 percent of $2.196 billion, or about $2.075 billion. While this is not a substantial reduction, the reduction will be much more meaningful in other deals where the target's shareholders will hold a more significant portion of the combined company. The upshot is that if Hertz does not pay too much of a deal premium, this deal has significant profit-increasing value to the original Hertz shareholders.

At the same time, Dollar Thrifty *knows* that Hertz would not be doing the deal unless there is some significant gain *and* that Hertz cannot achieve this gain unless Dollar Thrifty agrees to be acquired (leave aside hostile takeovers for now). So Dollar Thrifty will bargain to get some of this gain for its shareholders.

The first difficulty Dollar Thrifty will likely face in this bargaining game is uncertainty about the value of the gain V_g Hertz expects from the transaction.[26] If Dollar Thrifty estimates too high a gain, it will ask for too much at the bargaining table. Conversely, if it underestimates the gain, it could ask for too little and "leave money on the table" it could otherwise obtain for its shareholders. For its part, Hertz has an incentive to conceal its real belief about what it expects to be the gain. While Hertz would like Dollar Thrifty to believe there will be some significant gain (so that there are some apparent gains from trade to share to enable Hertz to pay a deal premium), it does not want Dollar Thrifty to know that Hertz expects the gain to be significantly higher so that Hertz can capture what it does not pay the Dollar Thrifty shareholders in a deal premium for the Hertz shareholders. Much of the target company's energies during the negotiations will be devoted to obtaining the best estimate of the acquiring company's expected gain by doing its own analysis of the possible deal synergies and looking at deal premiums paid in comparable deals.

A second critical factor in determining the magnitude of the deal premium is whether other firms are interested in acquiring the company and, if so, whether these other firms could achieve sufficient synergies to enable them to pay a higher deal premium. Consider the following simple bargaining game to illustrate the idea: if Player A can make a deal with Player B over how to split $100, they each get the agreed allocation; otherwise, Player A gets $60 and Player B gets zero. (In our earlier notation, V_c = $60 and V_g = $40.) So Player B has to agree to give Player A at least $60, leaving the anticipated gain of $40 to be allocated between them. Suppose they tentatively agree to split the $40 evenly, with each getting $20 of the expected gain. Now suppose a new Player C enters the game. Player C expects a gain of only $30 from a transaction with A. Player A can keep the deal with Player B and receive $80, or it can do an alternative deal with C. What is C willing to pay? C needs to pay at least $80 to top B's deal, but as long as it offers less than $90, it still comes out better than it would in the absence of a deal. Let's say that C offers a topping bid of $89. What is B's response? B should offer $90.01. This makes a topping bid by C

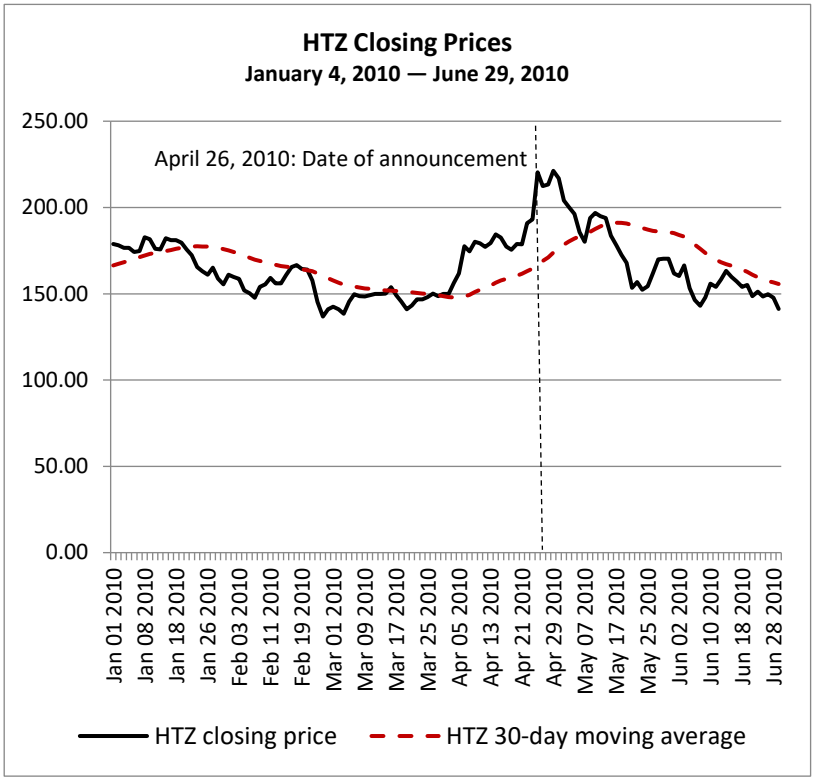
25. *See* Hertz Corp. News Release, Hertz Signs Definitive Agreement to Acquire Dollar Thrifty (Apr. 26, 2010).

26. Keep in mind that what is important in this bargaining game is the value Hertz *expects*, not the value that will actually result postmerger.

impossible (C would lose money) and B still captures a gain of $9.99. Not as good as the $20 it would receive under the first deal without C as a competitor, but better than nothing if B had not topped C's competing offer.

So what happened in the 2010 Hertz/Dollar Thrifty deal? Hertz paid $1.3 billion in cash and stock to the Dollar Thrifty shareholders. This amount was approximately $368 million more than what Hertz identified as Dollar Thrifty's premerger going-concern value. Even so, the Hertz shareholders came out very well. Their gain was the difference between their pro rata share of the combined company's value—about $2.075 billion—and the $1.3 billion paid to acquire Dollar Thrifty. That implies a net gain of roughly $775 million for the Hertz shareholders. This was an excellent outcome for Hertz. The stock market agreed: Hertz's stock price rose 14 percent on the day of the announcement. That response is notable, as the stock price of the acquiring company often declines in such transactions.[27] Some analysts criticized Dollar Thrifty for capturing too little of the total gain and for leaving a substantial portion of the value "on the table" for Hertz. Such a situation invites competitive bidding. A rival acquirer that could also generate substantial value from acquiring Dollar Thrifty would have a strong incentive to make a topping bid—and that is precisely what happened.

27. An acquiring company's stock will fall when the market believes that acquirer will lose value after it has paid for the target company. Of course, the market may be wrong, since it does not have all of the private information available to the acquiring company in estimating the value of the gain from the merger. Alternatively, it may be that the acquiring company overestimated the gain and paid too much for the target company. Indeed, the acquiring company may be the victim of the *winner's curse.* Consider four identical companies that are all bidding for the target with a going concern value of $100 million. Each has the same information, and their willingness to pay will depend on their estimates of the gain that will result from the transaction. The four bidders estimate their respective gains on the same information provided by the target company. Suppose that the four companies estimate the gain as $20 million, $24 million, $28 million, and $40 million (which, of course, they each keep confidential). Each firms assumes that the other firms, which are identical and have access to the same information, value the gain from the transaction as the same magnitude that they do, and, since it is an auction with four players, decide on bid prices that give 75 percent of the gain to the acquired company. That yields bid prices of $115 million, $118 million, $121 million, and $130 million. Who wins the bid? The highest bidder with the $130 million bid. But what is the likelihood it properly estimated the gain at $40 million when the other bidders estimated the gain so much lower? This is the winner's curse: the winning bid will be in the high-end tail of the expected value distribution, when the true value is more likely to be around the mean or median of the distribution. If the actual gain is $24 million, then the expected net yield of the transaction is a loss of $6 million ($100 million going concern value + $24 million in merger gain - $130 million in the purchase price = -$6 million). If the market sees the merger gain as less than $30 million, they the acquiring company's stock price will go down upon the announcement. The seminal article on the winner's curse in corporate acquisitions is Nikhil P. Varaiya & Kenneth R. Ferris, *Overpaying in Corporate Takeovers: The Winner's Curse*, 43 FIN. ANALYSTS J. 64 (1987). For more recent treatments, see, for example, Marta Arroyabe & Katrin Hussinger, *Acquisition Experience and the Winner's Curse in Corporate Acquisitions*, 56 APPLIED ECON. 3247 (2024); Eric De Bodt, Jean-Gabriel Cousin & Richard Roll, *Empirical Evidence of Overbidding in M&A Contests*, 53 J. Fin. & Quant. Analysis 1547 (2018); and Ulrike Malmendier, Enrico Moretti & Florian S. Peters, *Winning by Losing: Evidence on the Long-Run Effects of Mergers*, 31 REV. FIN. STUD. 2132 (2018).


HTZ Closing Prices
January 4, 2010 — June 29, 2010
250.00
200.00
150.00
100.00
50.00
0.00
April 26, 2010: Date of announcement
Jan 01 2010
Jan 08 2010
Jan 18 2010
Jan 26 2010
Feb 03 2010
Feb 11 2010
Feb 19 2010
Mar 01 2010
Mar 09 2010
Mar 17 2010
Mar 25 2010
Apr 05 2010
Apr 13 2010
Apr 21 2010
Apr 29 2010
May 07 2010
May 17 2010
May 25 2010
Jun 02 2010
Jun 10 2010
Jun 18 2010
Jun 28 2010
HTZ closing price
HTZ 30-day moving average

Antitrust Considerations

Negotiation of the 2010 Hertz-Dollar Thrifty Merger Agreement
Hertz Gobal Holdings, Inc., Form S-4, at 30-36 (filed May 9, 2011)
(excerpts from Background and Reasons for the Offer)

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On December 4, 2009, following a discussion among Hertz senior management and representatives of Hertz's then majority stockholders, Mr. Frissora called Mr. Thompson, to explore whether Dollar Thrifty might be interested in restarting discussion of a potential business combination given recent improvements in the financial markets. After a discussion with Dollar Thrifty's board of directors, Mr. Thompson communicated to Mr. Frissora on December 7, 2009 that Dollar Thrifty's board of directors was open to such a discussion. The closing price of Dollar Thrifty common stock on December 7, 2009 was $21.76.

Dollar Thrifty and Hertz executed a confidentiality agreement on December 10, 2009. Hertz subsequently requested that certain financial and legal advisors provide assistance in connection with the potential transaction: Barclays Capital Inc., referred to as Barclays and Bank of America Merrill Lynch, referred to as BofA Merrill Lynch, as financial advisors, Debevoise & Plimpton LLP, referred to as Debevoise, as legal and co-regulatory counsel, and Jones Day, as co-regulatory counsel.

On December 21, 2009, members of Dollar Thrifty and Hertz senior management held a telephone conference to discuss high-level due diligence matters. At the conclusion of that call, Mr. Thompson requested a written indication of interest from Hertz.

On December 22, 2009, Hertz submitted a non-binding indication of interest to acquire all of the shares of Dollar Thrifty at a price of $30.00 per share, consisting of $15.00 in cash and $15.00 in Hertz common stock. Hertz also requested a 45-day exclusivity period to conduct diligence and negotiate a merger agreement. On December 23, 2009, Mr. Thompson reported to Mr. Frissora that Dollar Thrifty's board of directors would meet to consider Hertz's latest indication of interest and would respond during the first week of 2010. The closing price of Dollar Thrifty common stock on that date was $26.90.

On December 29, 2009, Dollar Thrifty engaged Goldman, Sachs & Co., referred to as Goldman Sachs and J.P. Morgan as a financial advisors.

On December 30, 2009, Dollar Thrifty's board of directors met to discuss Hertz's indication of interest. At the meeting, representatives of Cleary reviewed the fiduciary obligations of the directors in connection with the consideration of a strategic opportunity such as that proposed by Hertz, including the "Revlon" duties that may arise in such a situation. The Dollar Thrifty board of directors also received a presentation from Dollar Thrifty's financial advisors of their preliminary financial analysis. The materials provided to the Dollar Thrifty board of directors also included a summary of the historic standalone capital structures, including debt, of Hertz and Avis. Following discussion with Dollar Thrifty's financial advisors, the Dollar Thrifty board of directors determined that it would be preferable if a substantial portion of the merger consideration in a transaction with Hertz were in the form of cash in light of the risk of a double dip recession, the continued volatility in the equity markets and the lengthy period of time that would likely be required to close any transaction. As before, transaction certainty was of paramount importance to the board of directors, and the directors reviewed with representatives of Cleary the regulatory issues that might arise in connection with a transaction with Hertz. The Dollar Thrifty board of directors also discussed other potential transaction partners, including Avis, and the financing and regulatory issues that might arise in a potential business combination with such parties. However, the members of the board of directors were concerned that Hertz would not participate in an auction and that other potential bidders, including Avis, would face difficulty given the unfavorable lending market for highly leveraged companies. In this regard, Dollar Thrifty's board of directors also considered Dollar Thrifty's history of numerous unsuccessful efforts to sell the company.

On December 31, 2009, Dollar Thrifty responded to Hertz's indication of interest in a letter that highlighted several areas for further discussion. Dollar Thrifty indicated that it would be willing to continue negotiations if, among other things, Hertz's proposed value to Dollar Thrifty stockholders was "at least in the mid-thirties" per share, a range established by Dollar Thrifty's board of directors in its judgment after consultation with Dollar Thrifty's financial advisors and senior management. While Dollar Thrifty stated a preference for all-cash consideration, it also indicated a willingness to receive Hertz common stock, subject to appropriate representation on Hertz's board of directors. Dollar Thrifty informed Hertz that, aside from price, the most important issue to Dollar Thrifty's board of directors was transaction certainty, particularly as it related to receipt of required antitrust approvals. Dollar Thrifty also requested additional detail with regard to Hertz's plans for the integration of the companies. The closing price of Dollar Thrifty common stock on that date was $25.61.

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On January 7, 2010, at the request of Hertz and Dollar Thrifty, the parties' respective financial advisors met to discuss certain financial aspects of a potential transaction, during which representatives of Barclays requested discussions with Dollar Thrifty management regarding Dollar Thrifty's business and potential transaction synergies. On January 18, 2010, senior management of Dollar Thrifty and Hertz met to discuss the proposed transaction, including potential synergies related to information technology, fleet management and flexibility in cash management and financing. Dollar Thrifty management also provided additional information regarding Dollar Thrifty's business, including its revenue sources and the mix, mileage, depreciation and disposition of its fleet. Throughout January 2010, at the request of Hertz and Dollar Thrifty, the parties' respective financial advisors continued discussions regarding financial aspects of a potential transaction.

During January and February 2010, Messrs. Thompson and Frissora communicated several times regarding a potential transaction, including the status of their respective companies' and advisors' due diligence efforts. In the course of these discussions, Mr. Frissora noted certain provisions in Hertz's publicly available debt agreements that would limit Hertz's flexibility after consummating an all-cash transaction, and further noted that these issues would not be alleviated by the availability to Hertz of Dollar Thrifty's cash reserves following a merger. After confirming the existence of such provisions, Mr. Thompson suggested that this issue could be addressed by having Dollar Thrifty pay an extraordinary dividend from its cash reserves immediately prior to the merger as part of the transaction.

On January 25, 2010, Hertz submitted a new non-binding indication of interest to acquire all of the shares of Dollar Thrifty common stock at a price of $35.00 per share, consisting of $21.00 in cash and $14.00 in Hertz common stock. That indication of interest also reiterated Hertz's request for a 45-day exclusivity period to conduct diligence and negotiate a merger agreement. The trading price of Dollar Thrifty common stock closed at $24.22 on that date.

On January 25 and 26, 2010, Messrs. Thompson and Frissora held a series of telephone calls discussing Hertz's new indication of interest. In these calls, Mr. Thompson focused on certainty of completion of the transaction, potential adjustments to the stock component of the merger consideration, and Dollar Thrifty representation on Hertz's board of directors.

On January 27, 2010, Dollar Thrifty's board of directors met to discuss, among other things, Hertz's new indication of interest. At the meeting, the board of directors received presentations from Dollar Thrifty's senior management, Dollar Thrifty's financial advisors and Cleary with respect to Hertz's proposal. Mr. Thompson updated the Dollar Thrifty board of directors on the operations and risk management of Dollar Thrifty, including the current rate environment, fleet costs, vehicle funding and the general outlook for 2010. The board of directors also discussed whether other potentially interested parties, particularly Avis and certain European-based car rental companies, should also be contacted. In this regard, the board discussed with Dollar Thrifty's financial advisors the ability of Avis to raise sufficient financing to make a competitive cash bid in light of its capital structure and the state of the debt financing markets at the time, as well as the impact the state of such markets might have on the ability of private equity buyers to effect an acquisition of Dollar Thrifty. Dollar Thrifty's board of directors discussed the likelihood that, in light of the state of the financing markets, Avis would need to offer a significant portion of any merger consideration in the form of Avis common stock, and that this would likely cause any transaction with Avis to require the approval of Avis's stockholders under the rules of the New York Stock Exchange. The board of directors further discussed with representatives of Cleary the relative antitrust-related risks associated with a combination with Avis, as compared with such risks arising from a combination with Hertz, including the risk that Avis's ownership of the Budget leisure car rental brand would invite additional regulatory scrutiny. The Dollar Thrifty board of directors also discussed the fact that rental car companies from Europe would not be able to gain the benefit of synergies that a U.S.-based purchaser would likely be able to recognize and thus would have difficulty in offering a competitive price for Dollar Thrifty. The board of directors also noted that in light of Dollar Thrifty's extensive history of failed merger efforts, rumors of new merger-related discussions could be highly disruptive and demoralizing for the company's employees. The board of directors recognized that the risk of such rumors would be increased to the extent that Dollar Thrifty actively inquired as to the level of interest of other parties. In discussion with representatives of Cleary, Dollar Thrifty's board of directors also considered that appropriate deal protection provisions that would typically be contained in a merger agreement, such as termination fees, should not preclude another interested bidder from making a bid after the signing of a definitive transaction agreement. Based on all of these considerations, the Dollar Thrifty board of directors determined not to contact other parties at that time and authorized Dollar Thrifty's management to execute a limited 45-day exclusivity agreement (provided that it could be terminated at an earlier date by Dollar Thrifty in certain circumstances) and to engage in due diligence and negotiations with Hertz.

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On February 1, 2010, Mr. Thompson telephoned Mr. Frissora to report that Dollar Thrifty's board of directors had authorized Dollar Thrifty's management to enter into an exclusivity agreement with Hertz. Mr. Thompson noted that Dollar Thrifty's board of directors continued to be focused on deal certainty and that a key element of the exclusivity period must be addressing the board of directors' concerns with respect to deal certainty.

On February 3, 2010, Dollar Thrifty and Hertz signed an exclusivity agreement, in which Dollar Thrifty agreed not to solicit, discuss or authorize an acquisition transaction with any third party prior to March 17, 2010, subject to an early termination right on or after March 3, 2010 if, in Dollar Thrifty's good-faith judgment, the discussions between the parties were unlikely to result in a definitive agreement. On February 3, 2010, trading in Dollar Thrifty common stock closed at $25.17.

During the week of February 8, 2010, Dollar Thrifty and Hertz began exchanging materials (including granting the other party access to an electronic data room) and conducting reciprocal due diligence investigations. On February 10, 2010, Mr. Thompson met in person in Chicago with Mr. Frissora and certain members of Hertz's board of directors to discuss a potential transaction. On February 11, 2010, Dollar Thrifty management conducted a management presentation in Chicago for Hertz management, providing an overview of the Dollar Thrifty business and responding to due diligence questions posed by Hertz management. The closing price of Dollar Thrifty common stock on that date was $26.96.

On February 12, 2010, Cleary delivered a draft merger agreement to Debevoise. During the weeks of February 15 and February 22, 2010, Dollar Thrifty and Hertz continued their respective due diligence efforts. On February 24, 2010, Debevoise delivered a revised draft of the merger agreement to Cleary, reflecting Hertz's comments. This draft contained an extensive list of closing conditions, including conditions relating to minimum cash amounts and minimum earnings before interest, taxes, depreciation and amortization, referred to as EBITDA, of Dollar Thrifty, as well as, the procurement of third-party consents, and the absence of any regulatory challenge to the transaction.

On February 15 and February 24, 2010, Dollar Thrifty's board of directors met to discuss the status of the potential transaction with Hertz.

On March 1 and 3, 2010, representatives of Debevoise and Cleary had telephonic discussions concerning the draft merger agreement provisions relating to the parties' obligations to obtain regulatory approvals and the proposed closing conditions in Hertz's revised draft of the merger agreement. On March 2, 2010, Debevoise communicated to Cleary that Hertz would be prepared to commit to divest (if required to obtain clearance under the HSR Act) business locations and business lines that produced, in the aggregate, less than $100-150 million in gross revenues and $10-15 million in EBITDA, in each case for calendar year 2009.

On March 3, 2010, in light of the issues raised by Hertz's comments on the merger agreement relating to transaction certainty, Dollar Thrifty decided to terminate discussions with Hertz, and J.P. Morgan, at Mr. Thompson's instruction, informed Barclays of that decision.

On March 5, 2010, Dollar Thrifty's board of directors met and discussed the recent developments concerning the negotiation of the merger agreement. The board of directors directed Dollar Thrifty management to suspend Hertz's due diligence access and not to engage in further discussions unless and until Hertz revised its positions in a manner more consistent with Dollar Thrifty's objective of transaction certainty. On the same day, first Dollar Thrifty, and then Hertz, suspended their respective due diligence investigations and the other party's access to its electronic data room. The closing price of Dollar Thrifty common stock on that date was $31.77.

On March 8 and March 11, 2010, Messrs. Thompson and Frissora held telephonic discussions in which Mr. Frissora responded to concerns raised by Mr. Thompson regarding provisions in the revised draft merger agreement related to transaction certainty, including the allocation of risk associated with procuring necessary regulatory approvals and also certain closing conditions sought by Hertz relating to Dollar Thrifty's financial condition.

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On March 12, 2010, Debevoise sent Cleary a further revised draft of the merger agreement, intended to reflect the March 8 and March 11 discussions between Messrs. Thompson and Frissora, including, among other things, the addition of a reverse termination fee payable by Hertz to Dollar Thrifty if certain regulatory approvals were not obtained prior to the merger agreement's termination date and the conditions to the consummation of the proposed transaction were otherwise fulfilled, and the deletion of certain closing conditions relating to Dollar Thrifty's financial condition that had been objected to by Mr. Thompson on behalf of Dollar Thrifty. The termination fee (payable by Dollar Thrifty under certain circumstances) and reverse termination fee (payable by Hertz under certain circumstances) proposed by Hertz were each in the amount of 4.5% of transaction equity value.

On March 16, 2010, Cleary sent Debevoise a proposal for a revised transaction structure designed to accommodate Dollar Thrifty's desire that the transaction be treated as a tax-free reorganization while preserving Hertz's desire that Dollar Thrifty's existing medium term notes remain outstanding notwithstanding the proposed transaction. During this period, however, due diligence remained suspended, pending the outcome of a meeting of Dollar Thrifty's board of directors to assess progress in addressing Dollar Thrifty's concerns with respect to the terms of the proposed merger agreement.

On March 17, 2010, Cleary sent Debevoise a revised draft of the merger agreement and on March 19, 2010, representatives of Cleary and Debevoise held a conference call to discuss various provisions of the draft merger agreement as well as Cleary's proposed structure. The discussion of the draft merger agreement addressed, among other things, the representations and warranties to be made by the parties, limitations on the parties' conduct of business between signing of the merger agreement and closing of the proposed transaction, other covenants, including a provision requiring Dollar Thrifty to make a special cash dividend to its stockholders immediately prior to the merger, restrictions on Dollar Thrifty's pursuing alternative business combinations, obligations relating to regulatory approvals, conditions to closing, and various provisions relating to termination and termination fees payable by Dollar Thrifty under certain circumstances (which Dollar Thrifty proposed to be equal to 3% of transaction equity value), reverse termination fees payable by Hertz under certain circumstances if Hertz failed to obtain certain regulatory approvals (which Dollar Thrifty proposed to be equal to 5% of transaction equity value) and expense reimbursement (which Hertz proposed to be $5 million for each party). On March 20, 2010, Debevoise sent Cleary a revised draft of the merger agreement intended to reflect the results of the March 19 discussions noting, among other things, that the issue of termination fees, reverse termination fees and expense reimbursement remained unresolved.

On March 21, 2010, senior management of Dollar Thrifty and Hertz held a conference call to discuss alternative transaction structures that were intended by Dollar Thrifty and its legal and financial advisors to allow the merger to be treated as a tax-free reorganization while not triggering a default under Dollar Thrifty's medium term note agreements, as well as proposed merger agreement limitations on the conduct of Dollar Thrifty's business between signing of the merger agreement and closing of the proposed transaction.

On March 22, 2010, representatives of Cleary communicated to representatives of Jones Day, Dollar Thrifty's proposal that Hertz commit to divest business locations or business lines that produced aggregate gross revenues in an amount up to $400 million in 2009 if necessary to obtain antitrust regulatory approvals.

On March 25, 2010, Dollar Thrifty's board of directors met to discuss the status of the discussions with Hertz. At the meeting, representatives of Cleary again reviewed with the board of directors their fiduciary duties in connection with a potential sale of Dollar Thrifty. Representatives of Cleary reported to the board of directors on the status of the merger agreement negotiations with Hertz, and described the alternative transaction structure earlier discussed with Debevoise. The members of the board of directors also discussed: the company's long-term growth rate, the historical volatility of the company's financial results, the company's ability to retain its senior management on a long-term basis and the position and the long-term competitive challenges facing the industry and the company; Dollar Thrifty's financial advisors' analyses relating to the proposed merger with Hertz; and the status of discussions with respect to the proposed transaction. The board of directors also discussed Dollar Thrifty's anticipated financial results for the first quarter of 2010, which were expected to be more favorable than those projected by Wall Street analysts. The board of directors considered whether to suspend further discussions with Hertz regarding transaction valuation until after the impact of the earnings announcement on the company's stock price was known. In addition, the Dollar Thrifty board of directors again considered the possibility of contacting Avis. Members of the board of directors noted that: no determination had been made to sell Dollar Thrifty; given the extensive history of prior failed discussions with Hertz and the rapidly growing spread between the trading prices of the companies' shares, there could be no assurance that the present discussions would result in any definitive merger agreement with Hertz; given its financial circumstances, Avis would likely require substantial financing and/or the approval of its shareholders in order to effect a transaction with Dollar Thrifty at a price competitive with the Hertz proposal, and such contingencies would present undesirable transaction risk for Dollar Thrifty and its shareholders; and the terms of the merger agreement then under discussion with Hertz would not preclude Avis from making a proposal after the signing of the agreement if it desired to do so. At the conclusion of the meeting, the board of directors authorized and directed Mr. Thompson to continue negotiations and due diligence with Hertz with a

target date for the signing of the merger agreement to occur after the announcement of both companies' earnings for the first quarter of 2010.

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On March 26, 2010, Mr. Thompson reported to Mr. Frissora that Dollar Thrifty's board of directors was satisfied with the progress that had been made on the proposed terms for a transaction and that, accordingly, it was prepared to reengage in the mutual due diligence needed to complete a transaction. Mr. Thompson also emphasized that transaction certainty remained Dollar Thrifty's primary issue and that Dollar Thrifty was not interested in a transaction with Hertz that did not include a premium to the market price. Also on March 26, at the request of Hertz and Dollar Thrifty, the respective financial advisors of Dollar Thrifty and Hertz held a conference call to discuss financial considerations with respect to the proposed transaction, and, separately, representatives of Cleary and Debevoise held a conference call to discuss the draft merger agreement and transaction structure. The closing price of Dollar Thrifty common stock on that date was $33.90.

On April 4, 2010, senior management of Dollar Thrifty and Hertz held a conference call, which continued their discussion on operating covenants that would limit Dollar Thrifty's conduct of business in the period between the signing of a merger agreement and closing of the proposed transaction. On April 8, Cleary delivered to Debevoise a revised draft of the operating covenants from the prior draft of the merger agreement, providing for such limitations. Also, on April 8, 2010, at the request of Hertz and Dollar Thrifty, Dollar Thrifty's financial advisors held a conference call with Barclays to discuss financial terms of the potential transaction between Hertz and Dollar Thrifty. Mr. Thompson instructed Dollar Thrifty's financial advisors to propose, among other things, a price of $44.96 per share of Dollar Thrifty common stock (a 25% premium to that day's closing price for shares of Dollar Thrifty common stock) in a 50% cash / 50% Hertz common stock consideration mix, to be effected as a tax-free reorganization. The closing price of Dollar Thrifty common stock on April 8, 2010 was $35.97.

On April 9, 2010, Hertz suspended the due diligence process and on April 12, 2010, Hertz's board of directors held a special telephonic meeting at which it rejected the oral proposal put forward by Dollar Thrifty's investment bankers on April 8 and instructed Hertz management to cease negotiations with Dollar Thrifty. That same day, Mr. Frissora sent a letter to Mr. Thompson informing him of this determination, but inviting Mr. Thompson to contact him with ideas to restart a transaction process.

On April 12, 2010, Mr. Nelson of Avis contacted J.P. Morgan to inquire about whether Mr. Thompson would accept a call from him. Mr. Nelson did not specify the reason he wanted to call Mr. Thompson. Following such contact from Mr. Nelson, J.P. Morgan conveyed Mr. Nelson's inquiry to Mr. Thompson and Mr. Capo. While he initially considered the possibility that Mr. Nelson requested the meeting for the purpose of discussing a potential bid for Dollar Thrifty, Mr. Thompson's understanding regarding Avis's interest and ability to effect such a transaction, the previously announced prospective changes in the senior management of Avis and the ambiguity surrounding the stated purpose of the meeting, as well as reports received by Mr. Thompson to the effect that Avis had made inquiries concerning his personal background, all led Mr. Thompson to conclude that the purpose of the meeting was of a personal nature, rather than to discuss a business combination transaction.

On April 14, 2010, representatives of J.P. Morgan proposed that Mr. Frissora and another member of Hertz's board of directors meet in Chicago with Mr. Thompson and a member of Dollar Thrifty's board of directors for the purpose of reconciling the outstanding issues between the companies. This meeting was scheduled for April 16, 2010.

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On April 15, 2010, Hertz senior management held a conference call with several members of Hertz's board of directors, at which management and representatives of Hertz's legal and financial advisors summarized the open issues in the negotiations with Dollar Thrifty.

On April 16, 2010, Messrs. Thompson and Frissora, along with members of Hertz senior management, Thomas Capo, the then non-executive chairman of Dollar Thrifty's board of directors, members of Dollar Thrifty senior management, and David Wasserman, a member of Hertz's board of directors, together with representatives of Hertz's and Dollar Thrifty's respective financial advisors, met in Chicago to discuss the proposed transaction. Initially at this meeting, representatives of Dollar Thrifty, based on their prior consultation with Dollar Thrifty's financial advisors and board of directors, informed Hertz and its representatives that Dollar Thrifty was only interested in a purchase price in excess of $40 per share of Dollar Thrifty common stock, with a 50% cash / 50% Hertz stock consideration mix in a tax-free reorganization structure. Hertz countered with an offer of $38 per share of Dollar Thrifty common stock and an 80% cash / 20% Hertz stock consideration mix. Dollar Thrifty then countered with an offer of $42 per share of Dollar Thrifty common stock and an 80% cash / 20% Hertz stock consideration mix, which Hertz was unwilling to offer. Hertz management advised the Dollar Thrifty representatives that Dollar Thrifty's proposal was unacceptable to Hertz, and that Hertz was terminating its discussions with Dollar Thrifty. The closing price of Dollar Thrifty common stock on April 16, 2010 was $34.63. Dollar Thrifty instructed Dollar Thrifty's financial advisors and Cleary to terminate all work in connection with the prospective transaction, and terminated Hertz's access to Dollar Thrifty's electronic data room.

Also on April 16, 2010, J.P. Morgan contacted Mr. Nelson of Avis to advise that Mr. Thompson would accept his call.

On April 19, 2010, Mr. Nelson invited Mr. Thompson to meet for dinner, stating that he was going to be visiting Tulsa to review Avis's Tulsa operation center. Although Mr. Thompson did not know the purpose of Mr. Nelson's invitation and continued to believe it was of a personal nature, he agreed to meet with Mr. Nelson and Robert Salerno, chief operating officer of Avis, on April 28, 2010. Mr. Thompson advised Mr. Capo shortly thereafter (and subsequently, the other members of the Dollar Thrifty board of directors) of Mr. Nelson's invitation. After the announcement of the execution of the 2010 Merger Agreement, Mr. Thompson canceled this meeting based on his view that such a meeting with an industry competitor at that time would have been inappropriate.

On April 21, 2010, Mr. Frissora telephoned Mr. Thompson and proposed a revised final offer by Hertz, which Mr. Frissora had previously discussed with a member of Hertz's board of directors and later that day communicated by e-mail to Hertz's board of directors, to acquire Dollar Thrifty at a price of $40 per share, with an 80% cash / 20% Hertz stock consideration mix, which would make the merger ineligible for tax-free reorganization treatment. Mr. Frissora communicated that the offer was subject to Dollar Thrifty's agreement to certain other terms, including a specified level of divestitures that Hertz would be required to accept in order to secure regulatory approval for the transaction, the termination date of the merger agreement, and the amount of the fees to be payable upon termination of the merger agreement under certain circumstances by Dollar Thrifty and Hertz, respectively. Mr. Frissora also stated that Hertz's proposal was also contingent upon the parties' execution of a definitive merger agreement no later than April 25, 2010 and public announcement of a transaction no later than the morning of April 26, 2010, on which date Hertz was scheduled to announce its financial results for the first quarter of 2010. Mr. Frissora subsequently confirmed Hertz's offer by e-mail to Mr. Thompson. The closing price of Dollar Thrifty common stock on April 21, 2010 was $37.22.

On April 22, 2010, Dollar Thrifty's board of directors met to consider the revised Hertz proposal. After discussion with Dollar Thrifty's management, Dollar Thrifty's financial advisors and Cleary, the board of directors concluded that, in its view, it was unlikely that Hertz would increase its offer of $40 per Dollar Thrifty share by more than a de minimis amount. In addition, although Dollar Thrifty board of directors had earlier considered suspending further discussions on transaction valuation until after the announcement of Dollar Thrifty's and Hertz's first quarter financial results, Hertz made clear that its then-current offer was contingent on the execution of a definitive transaction agreement prior to April 26, 2010, the day Hertz planned to announce its first quarter financial results (which had been previously shared with Dollar Thrifty) and prior to the date Dollar Thrifty had planned to announce its first quarter financial results (which had been previously shared with Hertz). Dollar Thrifty's board of directors believed that the then-current proposal was Hertz's best and final offer, and that Hertz would finally terminate discussions with Dollar Thrifty if the offer was not agreed to by Hertz's stated deadline. Dollar Thrifty's board of directors considered the possibility of accelerating the announcement of Dollar Thrifty's own financial results to be contemporaneous with Hertz's announcement, but concluded that such a step would not be practicable. Dollar Thrifty's board of directors then directed Dollar Thrifty management to finalize a definitive merger agreement with Hertz substantially on the proposed terms.

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After further negotiations, on April 22, 2010, Messrs. Frissora and Thompson agreed to recommend to their respective boards of directors a transaction between the companies at a price of $41 per share of Dollar Thrifty common stock in an 80% cash / 20% Hertz stock consideration mix and on the other terms proposed by Mr. Frissora on April 21. The proposed merger consideration of $41 per share of Dollar Thrifty common stock, together with the proposed resolution of the remaining issues raised in Mr. Frissora's April 21 proposal (including termination and reverse termination fees in an amount equal to 3.5% of transaction value, plus $5 million in expense reimbursement and provisions on the treatment of required divestitures) were set out in a letter delivered by Dollar Thrifty to Hertz on April 22, 2010. After receipt of this letter, Hertz representatives, including Debevoise and Jones Day, and representatives of Cleary held conference calls to discuss issues not addressed by the communications between Messrs. Thompson and Frissora, and finalized the specified level of required divestitures, which was ultimately included in the merger agreement.

On April 23, 2010, members of Hertz senior management, members of Dollar Thrifty senior management and representatives of Debevoise and Cleary held a conference call to discuss the operating covenants that would limit the conduct of Dollar Thrifty's business between signing of a merger agreement and the closing of the proposed transaction. Also on April 23, Cleary delivered to Debevoise a revised draft of the merger agreement. The closing price of Dollar Thrifty common stock on April 23, 2010 was $38.85.

Hertz, Dollar Thrifty and their respective representatives continued to discuss the terms of a proposed transaction from April 24 through April 25, 2010. The issues discussed included, among others, the circumstances and procedures under which the Dollar Thrifty board of directors could consider a competing transaction proposal, the requirement that immediately prior to the closing of the proposed transaction Dollar Thrifty pay a $200 million special cash dividend to its stockholders and, if the transaction closes prior to January 31, 2011, the obligation to repay its secured credit facility from cash on hand, and the identity of the Dollar Thrifty representative who would be appointed to the Hertz board of directors at closing of the proposed transaction. Based on these discussions, representatives of Debevoise and Cleary completed the negotiation of the terms of a definitive merger agreement on April 25, 2010.

In the afternoon of April 25, 2010, Dollar Thrifty's board of directors held a special telephonic meeting to consider the terms of the proposed transaction. At the meeting, representatives of Cleary reviewed with the board of directors their fiduciary duties in connection with the proposed transaction and the key terms of the merger agreement. Dollar Thrifty's management discussed Dollar Thrifty's anticipated ability to pay the special dividend with the board of directors. Dollar Thrifty's financial advisors made a presentation regarding their financial analyses of the transaction (related written materials having been provided in advance of the meeting to each member of the board), and delivered the oral opinions of their respective firms, which were subsequently confirmed by written opinions that, as of such date, and based upon and subject to the factors and assumptions set forth in the opinions, the total amount of cash and stock consideration, consisting of the merger consideration and special dividend per share amount, was fair, from a financial point of view, to Dollar Thrifty's shareholders. Following discussion, Dollar Thrifty's board of directors unanimously approved the proposed merger agreement and the transactions contemplated thereby, including the special dividend, recommended that Dollar Thrifty's shareholders approve the merger agreement, and directed the company to enter into the merger agreement.

Also in the afternoon of April 25, 2010, Hertz's board of directors held a special telephonic meeting to consider the terms of the proposed transaction. At the meeting, Mr. Frissora provided an overview of the proposed transaction and reviewed its strategic rationale. Barclays reviewed with Hertz's board of directors the financial terms of the proposed merger and Debevoise summarized the terms of the draft merger agreement. Following discussion, Hertz's board of directors unanimously approved the proposed merger and authorized Hertz to enter into the merger agreement.

On April 25, 2010, an Agreement and Plan of Merger (defined above as the 2010 Merger Agreement) was executed by Dollar Thrifty, Hertz, and HDTMS, Inc., a wholly owned subsidiary of Hertz. That same day Hertz and Dollar Thrifty issued a joint press release announcing the transaction.

The Merger Agreement

EX-2.1 2 a10-8961_1ex2d1.htm EX-2.1

Exhibit 2.1

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

by and among

HERTZ GLOBAL HOLDINGS, INC.

HDTMS, INC.

AND

DOLLAR THRIFTY AUTOMOTIVE GROUP, INC.

APRIL 25, 2010

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of April 25, 2010, is by and among Hertz Global Holdings, Inc., a Delaware corporation ("Parent"), HDTMS, Inc. a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and Dollar Thrifty Automotive Group, Inc., a Delaware corporation (the "Company").

W I T N E S S E T H:

WHEREAS, the respective boards of directors of Parent, Merger Sub and the Company have (i) determined that it is in the best interests of their respective companies and their stockholders to consummate the merger of Merger Sub with and into the Company (the "Merger") and (ii) approved and declared advisable this Agreement and the Merger, upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, representations, warranties and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

ARTICLE I

THE MERGER

SECTION 1.01 The Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the relevant provisions of the Delaware General Corporation Law (the "DGCL"), at the Effective Time, Merger Sub shall be merged with and into the Company. Following the Effective Time, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving entity in the Merger (the "Surviving Entity") and shall succeed to and assume all the rights and obligations of the Company and Merger Sub in accordance with the DGCL.

SECTION 1.02 Consummation of the Merger; Effective Time. The closing of the Merger (the "Closing") will take place at 10:00 a.m., New York time, on the second business day following the satisfaction or waiver by the party entitled to the benefit thereof, of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to their satisfaction, or waiver

by the party entitled to the benefit thereof, at the Closing), or on such other date and at such other time as the parties may mutually agree, at the offices of Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006. Upon the terms and subject to the conditions set forth herein, as soon as practicable on the Closing Date, the parties shall cause the Merger to be consummated by filing with the Secretary of State of the State of Delaware a duly executed certificate of merger (the "Certificate of Merger"), as required by the DGCL. The Merger shall become effective at such time as the Certificate of Merger is filed with the Secretary of State of the State of Delaware, or at such other time as Parent and the Company shall agree and shall specify in the Certificate of Merger. The date on which the Closing occurs pursuant to this Section 1.02 is referred to herein as the "Closing Date" and the time the Merger becomes effective pursuant to this Section 1.02 is referred to herein as the "Effective Time".

SECTION 1.03 Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the DGCL.

SECTION 1.04 Certificate of Incorporation and Bylaws. At the Effective Time and by virtue of the Merger, the Company Certificate shall be amended to be identical to the certificate of incorporation of Merger Sub in effect immediately prior to the Effective Time, except (i) for Article FIRST, which shall read "The name of the corporation is Dollar Thrifty Automotive Group, Inc.", (ii) that the provisions of the certificate of incorporation of Merger Sub relating to the incorporator of Merger Sub shall be omitted and (iii) as otherwise required by Section 6.04(a), and as so amended shall be the amended and restated certificate of incorporation of the Surviving Entity until thereafter amended in accordance with applicable Law and this Agreement. At the Effective Time, the Company Bylaws shall be amended to be identical to the bylaws of Merger Sub in effect immediately prior to the Effective Time, except as otherwise required by Section 6.04(a), and as so amended shall be the bylaws of the Surviving Entity until thereafter amended in accordance with applicable Law and this Agreement.

SECTION 1.05 Directors and Officers. The directors of Merger Sub immediately prior to the Effective Time and the persons designated as officers by Parent in writing to the Company at least three business days prior to the Closing Date shall be the directors and officers, respectively, of the Surviving Entity, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Entity.

ARTICLE II

EFFECT OF THE MERGER ON CAPITAL STOCK

SECTION 2.01 Effect on Capital Stock.

(a) At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or any holder of any of the following securities:

(i) subject to Section 2.02(e), each share of common stock, par value $0.01 per share, of the Company (the "Company Common Stock") that is issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares to be canceled in accordance with Section 2.01(a)(ii)) shall be converted into the right to receive:

(A) 0.6366 (the "Exchange Ratio") validly issued, fully paid and nonassessable shares of common stock, par value $0.01 per share, of Parent ("Parent Common Stock," such shares of Parent Common Stock issued or issuable pursuant to this Section 2.01(a)(i)(A), the "Stock Consideration"); and

(B) an amount in cash equal to $32.80 minus the Special Dividend Per Share Amount (the "Cash Consideration," and together with the Stock Consideration, the "Merger Consideration").

(ii) each share of Company Common Stock that immediately prior to the Effective Time is owned by Parent, Merger Sub, the Company (as treasury stock or otherwise) or any of their respective Subsidiaries shall be canceled without any consideration being exchanged therefor; and

(iii) each share of common stock, par value $0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value $0.01 per share, of the Surviving Entity.

(b) All of the shares of Company Common Stock converted into the right to receive the Merger Consideration pursuant to this Article II shall no longer be outstanding, and shall automatically be canceled and shall cease to exist, as of the Effective Time, and each certificate (each, a "Certificate") or book-entry share (each, a "Book-Entry Share") previously representing any such shares of Company Common Stock shall thereafter represent only the right to receive the Merger Consideration (and cash in lieu of any fractional share of Parent Common Stock), into which the shares of Company Common Stock represented by such Certificate or Book-Entry Share shall have

been converted pursuant to this Section 2.01 and Section 2.02(e), as well as any dividends to which holders of Company Common Stock have become entitled in accordance with Section 2.02(c).

(c) If, between the date of this Agreement and the Effective Time, the outstanding shares of Company Common Stock or Parent Common Stock shall have been increased, decreased, changed into or exchanged for a different number or kind of shares or securities as a result of a reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in capitalization (but excluding any change that results from (i) the exercise of stock options or the conversion into Parent Common Stock or Company Common Stock of other equity awards relating to the Parent Common Stock or Company Common Stock or (ii) the grant of stock-based compensation to directors or employees of Parent or (other than any such grants not made in accordance with the terms of this Agreement) the Company or their respective Subsidiaries under Parent's or the Company's, as applicable, stock option or compensation plans or arrangements), the Merger Consideration shall be appropriately and proportionately adjusted to reflect such reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in capitalization.

SECTION 2.02 Exchange of Certificates.

(a) Exchange Agent. At or prior to the Effective Time, Parent shall deposit, or shall cause to be deposited, on behalf of Merger Sub, with a bank or trust company designated by Parent with the Company's prior consent, which consent shall not be unreasonably withheld or delayed (the "Exchange Agent"), in trust for the benefit of the holders of Company Common Stock for exchange in accordance with this Article II through the Exchange Agent: (i) certificates representing the number of shares of Parent Common Stock that is sufficient to deliver, and Parent shall instruct the Exchange Agent to timely deliver, the aggregate Stock Consideration; (ii) immediately available funds sufficient to pay, and Parent shall instruct the Exchange Agent to timely pay, the aggregate Cash Consideration (together with, to the extent then determinable, any cash payable in lieu of fractional shares of Parent Common Stock pursuant to Section 2.02(e)) and (iii) from time to time as needed, additional cash sufficient to pay cash in lieu of fractional shares pursuant to Section 2.02(e) and any dividends and other distributions pursuant to Section 2.02(c) (such shares of Parent Common Stock and aggregate Cash Consideration, together with any dividends or other distributions with respect thereto with a record date after the Effective Time pursuant to Section 2.02(c) and any cash payments in lieu of any fractional shares of Parent Common Stock pursuant to Section 2.02(e), being hereinafter referred to as the "Exchange Fund").

(b) Exchange Procedures. As promptly as practicable after the Effective Time, and in any event within five business days thereafter, Parent shall cause the Exchange Agent to mail to each holder of record of shares of Company Common

Stock whose shares of Company Common Stock were converted into the right to receive the Merger Consideration pursuant to Section 2.01(a)(i): (i) a letter of transmittal in customary form (which shall specify that delivery shall be effected, and risk of loss and title to Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and which shall have such other provisions as Parent and the Company may agree) and (ii) instructions for use in surrendering the Certificates (or affidavits of loss in lieu thereof) or Book-Entry Shares in exchange for certificates or book-entries representing shares of Parent Common Stock comprising the Stock Consideration portion of the Merger Consideration and cash comprising the Cash Consideration portion of the Merger Consideration, any dividends or other distributions to which holders of Certificates or Book-Entry Shares are entitled pursuant to Section 2.02(c) and cash in lieu of any fractional shares of Parent Common Stock to which such holders are entitled pursuant to Section 2.02(e). Upon surrender of a Book-Entry Share or a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed, and/or such other documents as may be reasonably required by the Exchange Agent, the holder of such Book-Entry Share or Certificate shall be entitled to receive in exchange therefor (A) a certificate or book-entry representing that number of whole shares of Parent Common Stock that such holder has the right to receive pursuant to the provisions of this Article II after taking into account all the shares of Company Common Stock then held by such holder under all such Book-Entry Shares or Certificates so surrendered and (B) a check for the cash that such holder is entitled to receive pursuant to the provisions of this Article II, including (1) the Cash Consideration portion of the Merger Consideration, (2) any dividends or other distributions to which such holder is entitled pursuant to Section 2.02(c) and (3) cash in lieu of any fractional shares of Parent Common Stock to which such holder is entitled pursuant to Section 2.02(e), and the Book-Entry Share or Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of shares of Company Common Stock that is not registered in the transfer records of the Company, (x) a certificate or book-entry representing that number of whole shares of Parent Common Stock comprising the Stock Consideration portion of the Merger Consideration and (y) a check for the proper amount of cash (1) comprising the Cash Consideration portion of the Merger Consideration, (2) comprising any dividends or other distributions to which such holder is entitled pursuant to Section 2.02(c) and (3) in lieu of any fractional shares of Parent Common Stock to which such holder is entitled pursuant to Section 2.02(e), shall be issued to a person other than the person in whose name the Certificate so surrendered is registered, if, upon presentation to the Exchange Agent, such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such issuance shall pay any transfer or other Taxes required by reason of the issuance of shares of Parent Common Stock to a person other than the registered holder of such Certificate or establish to the reasonable satisfaction of the Exchange Agent that such Tax has been paid or is not applicable. The shares of Parent Common Stock constituting the Stock Consideration, at Parent's option, shall be in uncertificated book-entry form unless a physical certificate is requested by a holder of shares of Company Common Stock or is

otherwise required under applicable Law. Until surrendered as contemplated by this Section 2.02(b), each Book-Entry Share and Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender, the Merger Consideration, any dividends or other distributions to which the holder of such Certificate is entitled pursuant to Section 2.02(c) and cash in lieu of any fractional share of Parent Common Stock to which such holder is entitled pursuant to Section 2.02(e). No interest will be paid or will accrue for the benefit of holders of shares of Company Common Stock on the Merger Consideration or on any other cash payable to holders of Company Common Stock pursuant to this Article II.

(c) Distributions with Respect to Unexchanged Shares. No dividends or other distributions with respect to Parent Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Book-Entry Share or Certificate with respect to any shares of Parent Common Stock that the holder thereof has the right to receive upon the surrender thereof, and no cash payment in lieu of any fractional shares of Parent Common Stock shall be paid to any such holder pursuant to Section 2.02(e), in each case, until the holder of such Book-Entry Share or Certificate shall surrender such Book-Entry Share or Certificate in accordance with this Article II. Following surrender of any Book-Entry Share or Certificate, there shall be paid to the holder thereof, without interest, (i) at the time of such surrender, in addition to all other amounts to which such holder is entitled under this Article II, the amount of dividends or other distributions payable with respect to such whole shares of Parent Common Stock with a record date after the Effective Time and paid with respect to Parent Common Stock prior to such surrender and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(d) No Further Ownership Rights in Company Common Stock. All shares of Parent Common Stock issued and cash paid upon the surrender for exchange of Book-Entry Shares or Certificates in accordance with the terms of this Article II (including any dividends or other distributions paid pursuant to Section 2.02(c) and cash paid in lieu of any fractional shares pursuant to Section 2.02(e)) shall be deemed to have been issued (and paid) in full satisfaction of all rights pertaining to the shares of Company Common Stock previously represented by such Book-Entry Shares or Certificates, and at the close of business on the day on which the Effective Time occurs, the stock transfer books of the Company shall be closed and there shall be no further registration of transfers on the stock transfer books of the Surviving Entity of the shares of Company Common Stock that were outstanding immediately prior to the Effective Time. Subject to the last sentence of Section 2.02(f), if, at any time after the Effective Time, Book-Entry Shares or Certificates are presented to the Surviving Entity or the Exchange Agent for any reason, they shall be canceled and exchanged as provided in this Article II.

(e) No Fractional Shares. No certificates or scrip representing fractional shares of Parent Common Stock shall be issued upon the surrender for exchange of Book-Entry Shares or Certificates, no dividends or other distributions with respect to Parent Common Stock shall be payable on or with respect to any fractional share and no such fractional share will entitle the owner thereof to vote or to any rights of a stockholder of Parent. In lieu of the issuance of any such fractional share, Parent shall pay to each former holder of shares of Company Common Stock an amount in cash (rounded to the nearest whole cent) equal to the product obtained by multiplying (A) the fractional share interest to which such former holder (after taking into account all shares of Company Common Stock held at the Effective Time by such holder and rounded to the nearest ten thousandth when expressed in decimal form) would otherwise be entitled by (B) the per share closing price of Parent Common Stock on the Closing Date (or, if such date is not a trading day, the trading day immediately preceding the Closing Date) on the New York Stock Exchange ("NYSE") (such price described in this clause (B), the "Parent Trading Price").

(f) Termination of Exchange Fund. Any portion of the Exchange Fund that remains undistributed to the holders of Company Common Stock on the date that is twelve months after the Effective Time shall be delivered to Parent upon demand. Any holders of Book-Entry Shares or Certificates who have not theretofore complied with this Article II shall thereafter look only to Parent with respect to the Merger Consideration, any dividends or other distributions with respect to shares of Parent Common Stock and cash in lieu of any fractional shares of Parent Common Stock in accordance with this Article II. None of Parent, Merger Sub, the Company, the Surviving Entity or the Exchange Agent shall be liable to any person in respect of any shares of Parent Common Stock (or dividends or other distributions with respect thereto) or cash in lieu of any fractional shares of Parent Common Stock or cash from the Exchange Fund, in each case delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. Any amounts remaining unclaimed by holders of shares of Company Common Stock five years after the Effective Time (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Authority) shall become, to the extent permitted by applicable Law, the property of Parent free and clear of any claim or interest of any person previously entitled thereto.

(g) Investment of Exchange Fund. The Exchange Agent shall invest any cash included in the Exchange Fund, as directed by Parent, on a daily basis; provided, that (i) no such investment gains or losses thereon shall affect the amounts payable to the holders of shares of Company Common Stock pursuant to this Agreement, (ii) following any losses in the Exchange Fund, Parent shall promptly provide additional funds to the Exchange Agent to the extent such losses result in the amount of cash in the Exchange Fund being less than the amounts that remain payable to the holders of shares of Company Common Stock under this Agreement and (iii) such investments shall be in

(A) short-term obligations of or guaranteed by the United States of America with maturities of no more than 30 days, (B) in commercial paper obligations rated A-1 or P-1 or better by Moody's Investor Services, Inc. or Standard & Poor's Financial Services LLC, respectively or (C) short-term certificates of deposit with maturities of no more than thirty days or overnight bank repurchase agreements, in each case, of commercial banks with capital exceeding $5 billion (based on the most recent financial statements of such bank that are then publicly available). The Exchange Fund shall not be used for any other purpose, except as provided in this Agreement.

(h) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if reasonably requested by Parent, the posting by such person of a bond in such reasonable and customary amount as Parent may reasonably request as indemnity against any claim that may be made against it, the Surviving Entity or the Exchange Agent with respect to such Certificate, Parent shall cause the Exchange Agent to issue in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration, any dividends or other distributions to which the holder of such Certificate would be entitled pursuant to Section 2.02(c) and cash in lieu of any fractional share of Parent Common Stock to which such holder would be entitled pursuant to Section 2.02(e), in each case in accordance with the terms of this Agreement.

(i) Withholding. The Exchange Agent, Parent, the Company and the Surviving Entity shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of Company Common Stock, Company Options or stock-based awards such amounts as it is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the "Code"), and the rules and regulations promulgated thereunder, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld by the Exchange Agent, Parent, the Company or the Surviving Entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of shares of the Company Common Stock, Company Options or stock-based awards in respect of which such deduction and withholding was made.

SECTION 2.03 Dissenters' Rights. Notwithstanding any other provision contained in this Agreement, no shares of Company Common Stock that are issued and outstanding as of the Effective Time and that are held by a stockholder who has properly exercised such stockholder's appraisal rights in respect of such shares (any such shares being referred to herein as "Dissenting Shares") under Section 262 of the DGCL shall be converted into the right to receive the Merger Consideration as provided in Section 2.01 and instead shall be entitled to such rights as are granted by Section 262 of the DGCL (unless and until such stockholder shall have failed to timely perfect, or shall have effectively withdrawn or lost, such stockholder's right to dissent from the

Merger under the DGCL) and to receive such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to and subject to the requirements of the DGCL. The Company shall (i) give Parent prompt notice of any notice or demand for appraisal or payment for shares of Company Common Stock or any withdrawals of such demands received by the Company and (ii) give Parent the opportunity to participate in and direct all negotiations and proceedings with respect to any such demands and not, without the prior written consent of Parent, make any payment with respect to, or settle, offer to settle or otherwise negotiate any such demands.

SECTION 2.04 Stock Options and Other Stock-Based Awards.

(a) As of the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each option to purchase shares of Company Common Stock granted to employees or directors of the Company or any of its Subsidiaries under any Company Benefit Plan that is outstanding immediately prior to the Effective Time (collectively, the "Company Options") shall be converted into an option (an "Adjusted Option") to purchase, on the same terms and conditions as applied to each such Company Option immediately prior to the Effective Time (taking into account any accelerated vesting of such Company Options in accordance with the terms thereof), the number of whole shares of Parent Common Stock that is equal to the number of shares of Company Common Stock subject to such Company Option immediately prior to the Effective Time multiplied by the Incentive Award Exchange Ratio (rounded down to the nearest whole share), at an exercise price per share of Parent Common Stock (rounded up to the nearest whole cent) equal to the exercise price for each such share of Company Common Stock subject to such Company Option immediately prior to the Effective Time divided by the Incentive Award Exchange Ratio. For purposes of this Agreement, the "Incentive Award Exchange Ratio" shall be the sum of (x) plus (y), where (x) is the Exchange Ratio and (y) is the quotient of (i)(A) the Cash Consideration plus (B) the Special Dividend Per Share Amount divided by (ii) the Parent Trading Price.

(b) With respect to each grant of performance or performance unit share awards outstanding as of the Effective Time (each, a "Performance Share Award"), the holder thereof shall be entitled to receive in lieu of such Performance Share Award from Parent and Parent shall pay or cause to be paid to the holder thereof, as soon as reasonably practicable following the Effective Time and in any event within ten days thereafter, a lump sum cash payment equal to (x)(i) the Merger Consideration (valuing the stock portion of the Merger Consideration at the Parent Trading Price) plus (ii) the Special Dividend Per Share Amount multiplied by (y) the number of shares of Company Common Stock that would be delivered to the holder under such Performance Share Award if performance was achieved at the target level.

(c) As of the Effective Time, each restricted stock unit of Company Common Stock granted to any employee or director of the Company or any of its Subsidiaries under a Company Benefit Plan that is outstanding immediately prior to the

Effective Time other than the Performance Share Awards (collectively, the "Company Restricted Stock Units," and together with the Company Options and the Performance Share Awards, each, a "Company Incentive Award") shall, by virtue of the Merger and without any action on the part of the holder thereof, immediately accelerate and vest, be cancelled and converted into the right of the holder thereof to receive from Parent, and Parent shall pay or cause to be paid to each such holder of Company Restricted Stock Units, as soon as reasonably practicable following the Effective Time and in any event within ten days thereafter, a lump sum cash payment equal to (x)(i) the Merger Consideration (valuing the stock portion of the Merger Consideration at the Parent Trading Price) plus (ii) the Special Dividend Per Share Amount multiplied by (y) the number of shares of Company Common Stock to which such holder's Company Restricted Stock Units pertain.

(d) All account balances outstanding as of the Effective Time under the Company's Amended and Restated Deferred Compensation Plan, Retirement Plan, 2009 Deferred Compensation Plan, Deferred Compensation Plan — Management 2010 and any individual deferral agreements with executive officers and directors (collectively, the "Deferred Compensation Plans") will be paid out in cash to participants therein by the Company at the Effective Time, or as soon as practicable thereafter (but in no event later than five days after the Effective Time) by the Surviving Entity, less any required withholding taxes.

(e) Parent shall take all actions reasonably necessary or appropriate to have available for issuance or transfer a sufficient number of shares of Parent Common Stock for delivery upon exercise of the Adjusted Options. Promptly after the Effective Time, Parent shall prepare and file with the SEC a registration statement on Form S-8 (or other appropriate form) registering a number of shares of Parent Common Stock necessary to fulfill Parent's obligations under this Section 2.04.

(f) Prior to the Effective Time, Parent and the Company shall each take all such steps as may be necessary or appropriate to cause any disposition of shares of Company Common Stock or conversion of any derivative securities in respect of such shares of Company Common Stock in connection with the consummation of the transactions contemplated by this Agreement to be exempt under Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (together with the rules and regulations promulgated thereunder, the "Exchange Act"), including any such actions specified in the No-Action Letter dated January 12, 1999, issued by the SEC to Skadden, Arps, Slate, Meagher & Flom, LLP.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (i) as disclosed in the Company SEC Reports filed with or furnished to the SEC on or after January 1, 2008 and prior to the date hereof (excluding any cautionary language set forth in any risk factor section or forward-looking statements contained therein) or (ii) as disclosed in the disclosure schedule (the "Company Disclosure Schedule") delivered by the Company to Parent prior to the execution of this Agreement (which schedule sets forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in this Article III, or to one or more of the Company's covenants contained herein, provided, however, that disclosure in any section of such schedule shall apply only to the indicated Section of this Agreement except to the extent that it is reasonably apparent on the face of such disclosure that such disclosure is relevant to another Section of this Agreement, provided, further, that notwithstanding anything in this Agreement to the contrary, the mere inclusion of an item in such schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would be reasonably likely to have a Material Adverse Effect on the Company), the Company hereby represents and warrants to Parent and Merger Sub as follows:

SECTION 3.01 Corporate Organization. The Company and each of its Subsidiaries is an entity duly organized, validly existing and in good standing (to the extent such concepts are recognized in the applicable jurisdiction) under the Laws of its jurisdiction of organization. Each has the requisite power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business and is in good standing (to the extent such concepts are recognized in the applicable jurisdiction), in each jurisdiction in which the nature of the business now conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company. True, complete and correct copies of (i) the Certificate of Incorporation of the Company (the "Company Certificate") and the Fourth Amended and Restated Bylaws of the Company (the "Company Bylaws") and (ii) the certificate of incorporation and bylaws or other organizational or constitutive documents or governing instruments of each active and material Subsidiary of the Company, in each case as currently in effect, have previously been made available to Parent.

SECTION 3.02 Capitalization.

(a) The authorized capital stock of the Company consists of 60,000,000 shares, par value $0.01 per share (the "Company Capital Stock"), which are

divided into the following two classes: (i) 50,000,000 shares of Company Common Stock and (ii) 10,000,000 shares of preferred stock (the "Company Preferred Stock"). As of the close of business on April 22, 2010, (A) 28,639,652 shares of Company Common Stock were issued and outstanding, (B) no shares of Company Preferred Stock were issued and outstanding, (C) options to purchase 2,369,663 shares of Company Common Stock were outstanding under the Company Benefit Plans, (D) 96,820 Performance Share Awards were outstanding (i.e., at target levels) under the Company Benefit Plans and (E) 316,299 Company Restricted Stock Units were granted and remain outstanding under the Company Benefit Plans. As of the close of business on April 22, 2010, no shares of Company Capital Stock were reserved for issuance except for 3,321,916 shares of Company Common Stock reserved for issuance under the Second Amended and Restated Long-Term Incentive Plan and Director Equity Plan (including in respect of outstanding stock options). Section 3.02(a) of the Company Disclosure Schedule sets forth a correct and complete list, as of April 21, 2010, of all of the outstanding Company Options, Performance Share Awards and Company Restricted Stock Units and, where applicable, with respect to each such Company Option, Performance Share Award and Company Restricted Stock Unit, the holders, exercise prices, dates of grant, vesting schedules, expiration dates, performance periods, performance targets, and the Company plan, if any, under which such awards were granted. All of the issued and outstanding shares of Company Capital Stock have been, and all shares of Company Common Stock that may be issued prior to the Effective Time when issued will be, duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(b) No bonds, debentures, notes or other indebtedness having the right to vote on any matters on which stockholders may vote in respect of the Company or any of its Subsidiaries are issued or outstanding.

(c) Except as set forth above in Section 3.02(a), none of the Company and its Subsidiaries has or is bound by any outstanding subscriptions, options, warrants, calls, rights, convertible or exchangeable securities, "phantom" stock rights, stock appreciation rights, stock-based performance units, commitments or agreements of any character (i) calling for the purchase, transfer or issuance of, or the payment of any amount based on, any shares of Company Capital Stock or capital stock of any of the Company's Subsidiaries, voting securities of or any other equity interests in the Company or any securities representing the right to purchase or otherwise receive any shares of Company Capital Stock, voting securities of or other equity interests in the Company or its Subsidiaries, (ii) obligating the Company or any of its Subsidiaries to issue, grant, extend or enter into any such subscription, option, warrant, call, right, convertible or exchangeable security, "phantom" stock right, stock appreciation right, stock-based performance unit, commitment or agreement or (iii) giving any person the right to receive any economic benefit or right similar to or derived from the economic benefits and rights accruing to holders of capital stock of, or other equity interests in, the Company or any of its Subsidiaries.

(d) There are no contractual obligations of the Company or any of its Subsidiaries (i) to repurchase, redeem or otherwise acquire any shares of Company Capital Stock or capital stock of any of the Company's Subsidiaries, voting securities of, or any other equity interests in the Company or any of its Subsidiaries or any securities representing the right to purchase or otherwise receive any shares of Company Capital Stock, or any capital stock, voting securities of, or any other equity interests in the Company or any of its Subsidiaries or (ii) pursuant to which the Company or any of its Subsidiaries is or could be required to register shares of Company Capital Stock or other securities under the Securities Act.

(e) There are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party relating to the voting of any Company Capital Stock, or any capital stock, voting securities of or any equity interests in the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries owns any shares of capital stock of or other voting or equity interests in (including any securities exercisable or exchangeable for or convertible into shares of capital stock of or other voting or equity interests in) any other person.

(f) All of the issued and outstanding shares of capital stock, voting securities of or other equity interests in each of the Company's Subsidiaries are owned by the Company, directly or indirectly, free and clear of any lien, mortgage, pledge, security interest, charge, restriction on transfer of title, adverse claim, title retention agreement, conditional sale agreement or other encumbrance of any kind ("Encumbrances"), other than Permitted Encumbrances, and all of such shares or equity interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. For purposes of this Agreement, "Permitted Encumbrances" shall mean (A) liens for Taxes, assessments and other governmental charges not yet due and payable or, if due, not delinquent or being contested in good faith by appropriate proceedings and for which adequate reserves are maintained on the financial statements of the Company in conformity with GAAP consistently applied, (B) mechanics', workmen's, repairmen's, warehousemen's, carriers' or other like liens arising or incurred in the ordinary course of business consistent with past practice, in each case securing amounts no more than 30 days past due, (C) as of the date hereof, for purposes of this Article III and Section 5.01, liens arising under the documents listed on Section 3.02(f) of the Company Disclosure Schedule, (D) for purposes of Article IV, liens arising or permitted under the documents listed on Section 4.02(f) of the Parent Disclosure Schedule, (E) with respect to real property, easements, rights-of-way and other similar restrictions incurred in the ordinary course of business and (F) licenses of Intellectual Property in the ordinary course of business; provided, that no Permitted Encumbrance (i) shall materially interfere with the current use by the Company or any of its Subsidiaries of the assets, properties or rights affected thereby or (ii) has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

SECTION 3.03 Authority; No Violation.

(a) The Company has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby (including the Merger), subject only to the requirement that this Agreement, the Merger and the other transactions contemplated by this Agreement be adopted and approved by the holders of a majority of the outstanding shares of Company Common Stock (the "Company Stockholder Approval"). The Company Stockholder Approval is the only vote of the holders of any class or series of Company capital stock necessary to approve the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved by the Board of Directors of the Company. No corporate proceedings on the part of the Company, other than the required receipt of the Company Stockholder Approval, are necessary to approve this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and (assuming the due authorization, execution and delivery by Parent and Merger Sub) constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and subject to general principles of equity).

(b) Neither the execution and delivery of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby will (i) violate any provision of the Company Certificate, the Company Bylaws or the certificate of incorporation or bylaws or other organizational or constitutive documents or governing instruments of any material Subsidiary of the Company or (ii) assuming that the consents, approvals and filings referred to in Section 3.04 are duly obtained and/or made: (A) violate any Law applicable to the Company, its Subsidiaries or any of their respective properties or assets, (B) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with or without notice or lapse of time, or both, would constitute a default) under, require any consent or approval of any person under, result in or permit the termination of or a right of termination or cancellation under, the acceleration of the performance required by, or other adverse change of any right or obligation under any provision of (x) the Medium Term Notes or the Canadian Fleet Securitization Program or any agreements related to any of the foregoing or (y) any other agreement or instrument binding upon the Company or any of its Subsidiaries or any license, franchise, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or business of the Company and its Subsidiaries or (C) result in the creation or imposition of any Encumbrance, other than Permitted Encumbrances, on any asset of the Company or any of its Subsidiaries, except, in the case of the foregoing clause (ii) only, as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

(c) The Company Board of Directors, at a meeting duly called and held, duly adopted resolutions: (i) declaring that this Agreement, the Merger and the other transactions contemplated by this Agreement are advisable and in the best interests of the Company and the Company's stockholders, (ii) approving this Agreement, the Merger and the other transactions contemplated by this Agreement, (iii) directing that the adoption of this Agreement, the Merger and the other transactions contemplated by this Agreement be submitted to a vote at a meeting of the stockholders of the Company and (iv) recommending that the stockholders of the Company adopt this Agreement, the Merger and the other transactions contemplated by this Agreement (the "Company Recommendation"). Assuming the representations and warranties set forth in Section 4.13 are true and correct, no state "fair price", "moratorium", "control share acquisition" or similar anti-takeover statute or regulation (including Section 203 of the DGCL) (collectively, "Takeover Laws") is applicable to the Merger or any of the other transactions contemplated by this Agreement.

SECTION 3.04 Consents and Approvals. No consent, approval, order, notification or authorization of, action, nonaction by or in respect of, waiver, clearance, or registration, declaration or filing with, any federal, state, local or foreign government, any court, administrative, regulatory or other governmental agency, commission or authority or any non-governmental self-regulatory agency, securities exchange, commission or authority (each, a "Governmental Authority") is required by or with respect to the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the Merger or the other transactions contemplated by this Agreement, except for those required under or in relation to: (a) the applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), including the HSR Approval; (b) the applicable requirements of the Competition Act as enforced by the Competition Bureau of Canada (the "CBC"), including the CBC Approval; (c) any applicable requirements of any other U.S. or foreign competition, antitrust or merger control Laws listed on Section 3.04(c) of the Company Disclosure Schedule (such Laws, including the Competition Act and the HSR Act, the "Antitrust Laws"); (d) the filings pursuant to the Exchange Act: (i) in connection with the Company Stockholder Approval (including, but not limited to, the proxy requirements) and (ii) such other Exchange Act reports as may be required in connection with this Agreement and the transactions contemplated hereby; (e) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and the filing of appropriate documents with the relevant authorities of other states in which the Company is qualified to do business; (f) the filing of the insurance regulatory approvals listed on Section 3.04(f) of the Company Disclosure Schedule; (g) approval of the airport authorities listed on Section 3.04(g) of the Company Disclosure Schedule with respect to the corresponding airport concessions, licenses and leases listed on Section 3.04(g) of the Company Disclosure Schedule and (h) those which if not obtained or made would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

SECTION 3.05 Company SEC Reports; Financial Statements; No Undisclosed Liabilities; Internal Controls.

(a) Since January 1, 2008, the Company has timely filed all forms, reports and documents required to be filed by it with the Securities and Exchange Commission (the "SEC"), all of which have complied as of their respective filing dates or, if amended or superseded by a subsequent filing prior to the date hereof, the date of the last such amendment or superseding filing, in all material respects with all applicable requirements of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "Securities Act") and the Exchange Act. None of the forms, reports or documents filed by the Company with the SEC since such date (the "Company SEC Reports"), or that will be filed with the SEC after the date hereof, including any financial statements or schedules included or incorporated by reference therein, at the time filed (and, in the case of a registration statement, as of its effective date) or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of the last such amendment or superseding filing, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The financial statements of the Company included or incorporated by reference in the Company SEC Reports (including the related notes and schedules) (i) have been prepared from, and are in accordance with, the books and records of the Company and its Subsidiaries, (ii) fairly present in all material respects the consolidated results of operations, cash flows, changes in stockholders' equity and consolidated financial position of the Company and its Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth (subject, in the case of unaudited financial statements, to normal year-end audit adjustments), (iii) complied as to form, as of their respective dates of filing with the SEC, in all material respects with published rules and regulations of the SEC with respect thereto and (iv) have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto. The books and records of the Company and its Subsidiaries have been and are being maintained in all material respects in accordance with GAAP.

(c) None of the Company or any of its Subsidiaries has any liability or obligation of any nature whatsoever (whether absolute, accrued, known or unknown, contingent or otherwise and whether due or to become due) that is required to be set forth on a balance sheet prepared in accordance with GAAP, except for those liabilities and obligations: (i) that are reflected or reserved against in the Company's consolidated balance sheet dated as of December 31, 2009 included in the Company SEC Reports, including any notes thereto, (ii) arising out of this Agreement and (iii) incurred in the ordinary course of business consistent with past practice since December 31, 2009, which

would not be prohibited by this Agreement and that have not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

(d) The Company has designed a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) to provide reasonable assurance regarding the reliability of financial reporting and such system is effective at the reasonable assurance level. The Company (i) has implemented and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) designed to ensure that material information relating to the Company and its consolidated Subsidiaries is made known to the Company's management as appropriate to allow timely decisions regarding required disclosure and such controls and procedures are effective in ensuring such disclosures and communications, and (ii) has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's outside auditors and the audit committee of the Company's Board of Directors (and made summaries of such disclosures available to Parent): (x) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting. Each of the Company and its Subsidiaries has substantially addressed any such deficiency, material weakness or fraud. As of the date hereof, there is no reason to believe that the Company's outside auditors, chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act, without qualification, when required.

(e) Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer and each former principal financial officer of the Company, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act and the rules and regulations of the SEC promulgated thereunder (the "Sarbanes-Oxley Act") with respect to the Company SEC Reports, and the statements contained in such certifications were true and correct on the date such certifications were made. For purposes of this Section 3.05(e) and Section 4.05(e) "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act. Neither the Company nor any of its Subsidiaries has outstanding "extensions of credit" or has arranged any outstanding "extensions of credit" to directors or executive officers in violation of Section 402 of the Sarbanes-Oxley Act.

(f) Since January 1, 2008, (i) none of the Company or any of its Subsidiaries nor, to the Knowledge of the Company, any of their respective directors, officers, employees, auditors, accountants or Representatives has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of the Company, its Subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that the Company or any of its Subsidiaries has engaged in questionable accounting or auditing practices and (ii) no attorney representing the Company or any of its Subsidiaries, whether or not employed by the Company or any of its Subsidiaries, has reported evidence of a material violation of securities Laws, breach of fiduciary duty or similar violation by the Company, its Subsidiaries or any of their respective officers, directors, employees or agents to the Board of Directors of the Company or any committee thereof or to the chief executive officer or general counsel of the Company in accordance with Section 307 of the Sarbanes-Oxley Act.

SECTION 3.06 Absence of Certain Changes or Events.

(a) Since December 31, 2009 and prior to the date hereof, no change, effect, event, circumstance, occurrence, state of facts or development (or with respect to any change, effect, event, circumstance, occurrence, state of facts or development existing prior to December 31, 2009, any worsening thereof) has occurred that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

(b) Since December 31, 2009 and prior to the date hereof, the Company and its Subsidiaries have carried on their respective businesses in all material respects in the ordinary course of business consistent with past practice, except for the negotiation, execution, delivery and performance of this Agreement.

(c) Since December 31, 2009 and prior to the date hereof, there has not been any action taken by the Company or any of its Subsidiaries that, if taken during the period from the date of this Agreement through the Effective Time, would constitute a breach of Section 5.01.

SECTION 3.07 Legal Proceedings. There is no suit, action, claim, proceeding or investigation by or before any Governmental Authority or arbitrator pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries or to which any of their respective properties or assets are subject that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company (in each case, if adversely determined). There is no judgment, decree, injunction, rule or order of any Governmental Authority or arbitrator outstanding against, or, to the Knowledge of the Company, investigation by any Governmental Authority involving, the Company or any of its Subsidiaries or any of their

respective properties or assets that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

SECTION 3.08 Taxes and Tax Returns.

(a) The Company and each of its Subsidiaries has duly and timely filed (including all applicable extensions) all material Tax Returns required to be filed by it (all such returns being true, correct and complete in all material respects). The Company and each of its Subsidiaries has paid all material Taxes due and payable, whether or not shown as due on any Tax Return, or has made a provision for the payment of all material Taxes that are due or claimed to be due from it by federal, state, foreign or local taxing authorities (other than Taxes that are not yet delinquent or are being contested in good faith). There is no proceeding, audit or written claim pending or proposed with respect to any material Taxes of the Company or any of its Subsidiaries. None of the Company or its Subsidiaries has received any written notice from any taxing authority to the effect that such authority intends to conduct an audit or investigation of any material Tax matter. There are no material disputes pending, or claims asserted in writing, for Taxes or assessments upon the Company or any of its Subsidiaries. None of the Company or any of its Subsidiaries is a party to or is bound by any Tax sharing, allocation or indemnification agreement or arrangement (other than such an agreement or arrangement (i) between or among the Company or any of its Subsidiaries or (ii) not primarily related to Taxes, and in either case entered into in the ordinary course of business). Within the past two years, none of the Company or any of its Subsidiaries has been a "distributing corporation" or a "controlled corporation" in a distribution intended to qualify under Section 355(a) of the Code. None of the Company or any of its Subsidiaries has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

(b) As used in this Agreement, the term "Tax" or "Taxes" means (i) all federal, state, local and foreign income, excise, gross receipts, gross income, ad valorem, profits, gains, property, capital, sales, transfer, use, payroll, employment, severance, withholding, duties, intangibles, franchise, occupation, service, stamp, value added, backup withholding and other taxes, charges, levies or like assessments, together with all penalties and additions to tax and interest thereon, and (ii) any liability for Taxes described in clause (i) above under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law).

(c) As used in this Agreement, the term "Tax Return" means a report, return or other information (including any amendments) required to be supplied to a Governmental Authority with respect to Taxes, including, where permitted or required, combined or consolidated returns for any group of entities that includes the Company or any of its Subsidiaries.

(d) As of the date hereof, none of the Company or any of its Subsidiaries has executed (or had executed on its behalf) any outstanding waivers or comparable consents regarding the application of the statute of limitations with respect to any material Taxes or Tax Returns.

(e) All material Taxes which the Company or any of its Subsidiaries has been required to collect or withhold have been duly collected or withheld and, to the extent required when due, have been duly and timely paid to the proper taxing authority.

(f) There are no liens for Taxes upon any assets of the Company or any of its Subsidiaries other than Permitted Encumbrances.

(g) No jurisdiction where the Company or any of its Subsidiaries does not file a Tax Return has made a claim in writing that the Company or any of its Subsidiaries is required to file a Tax Return for such jurisdiction.

(h) The Company and each of its Subsidiaries has maintained the books and records required to be maintained pursuant to Section 6001 of the Code and the rules and regulations thereunder, and comparable laws, rules and regulations of the countries, states, counties, provinces, localities and other political divisions wherein it is required to file material Tax Returns and other reports relating to Taxes (or such books and records have been maintained on the Company's or such Subsidiary's behalf).

(i) None of the Company or its Subsidiaries has (i) executed or entered into a closing agreement pursuant to Section 7121 of the Code or any predecessor provision thereof or any similar provision of state, local or non-U.S. law that is currently in effect; (ii) extended the time within which to file any Tax Return (other than an automatic extension not requiring the consent of any taxing authority), which Tax Return has since not been filed; or (iii) granted to any person any power of attorney that is currently in force with respect to any Tax matter.

(j) None of the Company or its Subsidiaries has agreed to, requested, or is required to include any adjustment under Section 481 of the Code (or any corresponding provision of state, local or foreign law) by reason of a change in accounting method or otherwise, which adjustments would apply after the Merger.

(k) All elections made under Treasury Regulation Section 301.7701-3 for the Company and its Subsidiaries are set forth on Section 3.08(k) of the Company Disclosure Schedule.

(l) Neither the Company nor any Subsidiary has outstanding any material deferred intercompany gain or loss either under United States federal income tax law or under any similar state, local or non-United States tax law.

(m) The Company and its domestic Subsidiaries have operated their "like kind exchange" program in accordance with the requirements of Section 1031 of the Code and the Treasury Regulations promulgated thereunder pursuant to one or more "safe harbors" described in Treasury Regulation Section 1.1031(k)-1(g) and Revenue Procedure 2003-39.

SECTION 3.09 Employee Matters.

(a) Section 3.09(a) of the Company Disclosure Schedule sets forth a complete and correct list of all material Company Benefit Plans. None of the Company Benefit Plans listed on Section 3.09(a) of the Company Disclosure Schedule is a "multiemployer plan" as defined in Section 3(37) of the Employee Retirement Income Security Act ("ERISA") or a "multiple employer" plan within the meaning of Section 4064 of ERISA.

(b) Each of the Company Benefit Plans intended to qualify under Section 401 of the Code has received a favorable determination letter from the Internal Revenue Service and, to the Knowledge of the Company, there are no existing circumstances or events that would reasonably be expected to adversely affect the qualified status of any Company Benefit Plan.

(c) None of the Company Benefit Plans is subject to Title IV or Section 302 of ERISA or Section 412 of the Code and neither the Company nor any of its Subsidiaries has maintained a plan subject to such Laws in the past six years.

(d) [intentionally omitted]

(e) There are no pending legal proceedings which have been asserted or instituted or, to the Knowledge of the Company, have been threatened against any of the Company Benefit Plans, or the assets of any such plan with respect to the operation of any such plan (other than routine claims for benefits).

(f) Each of the Company Benefit Plans has been maintained and administered in material compliance with its terms and provisions of applicable Law.

(g) No Company Benefit Plan or other arrangement provides medical or death benefits (whether or not insured) with respect to current or former employees of the Company beyond their retirement or other termination of employment except as required by Section 4980B of the Code.

(h) Since December 31, 2009 there has been no amendment to any Company Benefit Plan, nor, to the Knowledge of the Company, has the Company or any of its Subsidiaries communicated to any current or former employee any binding commitment to amend or modify any Company Benefit Plan or to establish or implement

any other employee or retiree benefit or compensation arrangement, in either case that would materially increase the cost or expense of the Company Benefit Plans to the Company and its Subsidiaries.

(i) The execution, delivery and performance of this Agreement by the Company and the consummation of the transactions contemplated hereby will not (alone or in combination with any other event) result in (i) an increase in the amount of compensation or benefits or the acceleration of the vesting or timing of payment of any compensation or benefits payable to or in respect of any current or former employee, officer, director or independent contractor of the Company or any Subsidiary or (ii) any new or increased or accelerated funding obligation with respect to any Company Benefit Plan.

(j) Neither the execution, delivery and performance of this Agreement by the Company nor the consummation of the transactions contemplated hereby will (alone or in combination with any other event) entitle any current or former employee, officer or director of the Company or its Subsidiaries to severance pay or any other payment or result in any payment to any "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G(1)) that could reasonably be construed, individually or in combination with any other such payment, to constitute an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code).

SECTION 3.10 Labor Relations.

(a) None of the Company or any of its Subsidiaries is a party to any labor or collective bargaining agreement and there are no labor unions or other organizations representing, purporting to represent or attempting to represent any employees employed by the Company or any of its Subsidiaries.

(b) Since January 1, 2009, there have not been any material (i) strikes, work stoppages, slowdowns, lockouts or arbitrations or (ii) grievances or other labor disputes pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries.

(c) Since January 1, 2009, there have not been any material complaints, charges or claims (including settled claims) against the Company or any of its Subsidiaries pending, or, to the Knowledge of the Company, threatened to be brought or filed with any Governmental Authority in connection with the employment, termination of employment, compensation or employee benefits of any individual.

(d) Since January 1, 2009, the Company has been in compliance with all applicable Laws relating to employment, equal employment opportunity (including Laws prohibiting employment discrimination, harassment or retaliation), wages, hours, leaves, workers' compensation, disability, occupational health and safety, immigration,

collective bargaining, secondment, contractors and temporary employees, other employment terms and conditions, and plant closings and layoffs (including the Worker Adjustment and Retraining Notification Act), except for such non-compliance as has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

SECTION 3.11 Compliance with Applicable Law.

(a) The Company and each of its Subsidiaries holds all licenses, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses as currently conducted, which are being operated in compliance therewith, and all such licenses, franchises, permits and authorizations are in full force and effect, except for such licenses, franchises, permits and authorizations the failure of which to possess or be in full force and effect or to be complied with has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company. Since January 1, 2008, the Company and each of its Subsidiaries has been in compliance with and is not in default or violation of any statute, law, ordinance, rule, regulation, order, judgment or decree of a Governmental Authority (each, a "Law") applicable to the Company and its Subsidiaries, the properties and assets of the Company and its Subsidiaries and the business of the Company and its Subsidiaries taken as a whole, except to the extent any non-compliance with any such Law has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

(b) Other than any agreement or understanding of a commercial nature under which the Company or any of its Subsidiaries provide goods or services to a Government Authority, none of the Company or any of its Subsidiaries is operating under any agreement or understanding with any Government Authority which in any way restricts its authority to conduct its business or requires it to take, or refrain from taking, any action relating to the conduct of its business otherwise permitted by Law, except as has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

SECTION 3.12 Compliance with Insurance Laws.

(a) Except to the extent such non-compliance has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company, (i) the business, activities and operations of the Company and each of its Subsidiaries have been conducted in compliance with all applicable insurance statutes, regulations, orders, decrees, rules, pronouncements, ordinances, bulletins, market conduct recommendations, licensing requirements, writs, injunctions, directives, judgments, settlement agreements, principles of common law, constitutions and treaties enacted, promulgated, issued, enforced or entered by any Governmental Authority regulating the business, activities or operations of the Company

and each of its Subsidiaries (collectively, "Insurance Laws"), and (ii) each of the Company and its Subsidiaries and their respective Affiliates, insurance producers, agencies, agents, managing general agents, wholesalers, brokers, solicitors, adjusters, customer representatives and franchisees (collectively, the "Company Insurance Producers") has marketed, sold and issued their respective products in compliance with applicable Insurance Laws and in the respective jurisdictions in which such products have been sold, including, without limitation, in compliance with (x) all applicable Insurance Law prohibitions against "redlining" or withdrawal of business lines, (y) all applicable requirements relating to disclosures to customers and insured and (z) all applicable requirements relating to insurance product projections and illustrations.

(b) Since January 1, 2008, each Company Insurance Producer that was or is required to hold a permit, certification, approval, registration, consent, authorization, franchise, variance, exemption or order issued by a Governmental Authority to write, sell or produce insurance products for or on behalf of the Company or any of its Subsidiaries was duly licensed and appointed as required by applicable Law in the particular jurisdiction in which and at the time that such Company Insurance Producer wrote, sold or produced business, except to the extent such non-compliance has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

SECTION 3.13 Certain Contracts.

(a) Except for agreements, contracts, leases, licenses, arrangements or commitments to which the Company or any of its Subsidiaries have filed in unredacted form as exhibits to the Company SEC Reports filed prior to the date hereof, Section 3.13 of the Company Disclosure Schedule sets forth a true, complete and correct list of each agreement, contract, lease, license, arrangement or commitment to which the Company or any of its Subsidiaries is a party or by which it is bound or restricted:

(i) that is a partnership, limited liability company, joint venture or similar agreement that is material to the business of the Company and its Subsidiaries taken as a whole;

(ii) pursuant to which any of the Company or any of its Subsidiaries has created, incurred or assumed any Indebtedness or assumed, guaranteed, endorsed or otherwise become liable or responsible for the Indebtedness or other obligation of any other person or entity, and all material agreements related to any such Indebtedness or other obligation, including, without limitation, any agreement creating or governing any Encumbrance on any asset of the Company or any of its Subsidiaries to secure such Indebtedness or other obligation;

(iii) pursuant to which the Company or any of its Subsidiaries has an obligation to make an investment in or loan to any other person or entity;

(iv) pursuant to which the Company or any of its Subsidiaries has purchased, licensed or sold, during calendar year 2009, goods, equipment (including vehicles) or services that involved payment by or to the Company and its Subsidiaries in excess of $5,000,000 during such period or that provides for payments in excess of such amount over the remaining term of such agreement (in each case, whether under a single agreement or a series of related agreements);

(v) that is a concession, operating or lease agreement or license, rental or occupancy agreement, installment or conditional sale agreement or any other contract affecting the ownership of, leasing of, title to or other interest in any real property, tangible personal property or any concession, in each case, involving payment by or to the Company and its Subsidiaries in excess of $5,000,000 during any twelve-month period;

(vi) that is a general sales agency, travel agency or tour operator contract that is material to the business of the Company and its Subsidiaries taken as a whole;

(vii) that contains covenants restricting or limiting the ability of the Company, its Subsidiaries or any of their respective Affiliates (including any such agreement that by its terms would purport to apply to Parent and its Subsidiaries from and after the Closing) to engage in any line of business anywhere in the world (including any covenant not to compete or to conduct business on an exclusive or preferential basis with a third party) or which could require the disposition of any material assets or line of business of the Company or its Affiliates (including any such agreement that by its terms would purport to apply to Parent and its Subsidiaries from and after the Closing), other than those that may be canceled by the Company or its Subsidiary party thereto upon 60 days notice or less without payment or penalty;

(viii) to which any of the Company's Affiliates (other than the Company and its Subsidiaries) is a party and which benefits the Company or any of its Subsidiaries, including non-competition and confidentiality agreements;

(ix) that contains any indemnification rights or obligations, or credit support relating to such indemnification rights or obligations, other than any of such indemnification rights or obligations incurred in the ordinary course of business;

(x) any agreement relating to any interest rate, derivatives or hedging transaction;

(xi) any agreement or series or related agreements, including any option agreement, relating to the acquisition or disposition of any business, capital

stock or assets (whether by merger, sale of stock, sale of assets or otherwise) that is material to the Company and its Subsidiaries taken as a whole; or

(xii) that is a settlement or similar agreement with any Governmental Authority or an order or consent of a Governmental Authority to which the Company or any of its Subsidiaries is subject involving future performance by the Company or any of its Subsidiaries that is material to the business of the Company and its Subsidiaries taken as a whole.

Each agreement, contract, plan, lease, license, arrangement or commitment that is required to be (1) filed with the Company SEC Reports or (2) set forth on Section 3.13 of the Company Disclosure Schedule, is referred to herein as a "Company Material Contract."

(b) Except as have not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company, each Company Material Contract is in full force and effect and is (i) a valid and binding obligation of the Company or its Subsidiary that is a party thereto and (ii) to the Knowledge of the Company, a valid and binding obligation of each other party thereto. None of the Company or any of its Subsidiaries that is a party to any Company Material Contract is in, or alleged to be in, material breach thereof or material default thereunder, and no event or circumstance has occurred that, with or without the giving of notice or the lapse of time or both, would constitute such a material breach or default or result in the termination of or a right of termination or cancellation thereunder, accelerate the performance or obligations required thereby, or result in the loss of any benefit thereunder. None of the Company or any of its Subsidiaries has provided or received any notice of any intention to terminate any Company Material Contract. To the Knowledge of the Company, no other party to any Company Material Contract is in material breach thereof or in material default thereunder and no event or circumstance has occurred that, with the giving of notice or the lapse of time or both, would constitute such a material breach or default or result in the termination of or a right of termination or cancellation thereunder, accelerate the performance or obligations required thereby, or result in the loss of any benefit thereunder.

SECTION 3.14 Property. Section 3.14(a) of the Company Disclosure Schedule sets forth (i) the address of each parcel of real property owned by the Company or its Subsidiaries ("Company Owned Real Property"), (ii) the address or the airport location of all material leasehold or subleasehold estates, and concessions or other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interests in real property held by or for the Company or its Subsidiaries (the "Company Leased Real Property"). Except as set forth in Section 3.14(a) of the Company Disclosure Schedule, the Company or its Subsidiaries have made available (or within 10 Business Days following the date hereof will make available) to Parent correct and complete copies of all material instruments, licenses and agreements, together with all

amendments, modifications, extensions and supplements thereto, granting to the Company or its Subsidiaries, leasehold interests, concession or operating rights with respect to the Company Leased Real Property (each, a "Lease", and collectively, the "Leases"). Each Lease grants the tenant thereunder the exclusive right to use and occupy the premises and the tenant enjoys peaceful and undisturbed possession thereon, except as has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company. The Company and its Subsidiaries have not subleased, licensed or otherwise granted any person the right to use or occupy such Company Owned Real Property or Company Leased Real Property or any portion thereof. The Company and its Subsidiaries have such good, valid and marketable fee simple title to, or such legal, binding and valid rights by lease, license, other agreement or otherwise to use, all assets and properties (in each case, free and clear of all Encumbrances other than Permitted Encumbrances) necessary and desirable to enable the Company and its Subsidiaries to conduct their business as currently conducted, except as has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company. All buildings, structures, fixtures and other improvements on the Company Owned Real Property and the Company Leased Real Property are in good condition and are in all material respects adequate to operate the business as currently conducted, except as have not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company. Except as set forth in the Leases, neither the Company nor its Subsidiaries owns, holds, has granted or is obligated under any option, right of first offer, right of first refusal or other contractual right to sell or dispose of the Company Owned Real Property or the Company Leased Real Property or any portion thereof or interest therein.

SECTION 3.15 Airport Concessions, Licenses and Leases. Except as has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company, each airport concession, license or lease to which the Company or any of its Subsidiaries is a party as a concessionaire grants to the Company or one of its Subsidiaries (a) the right to use and occupy the counter areas in terminals or consolidated rental car facilities on an exclusive basis, together with such areas as may be designated for rental car operations and related parking areas designated therein and (b) the non-exclusive right to use and occupy such other areas of the applicable airport as may be necessary or convenient for the operation of the Company or its Subsidiary's business at such airport.

SECTION 3.16 Intellectual Property/Information Technology. Section 3.16 of the Company Disclosure Schedule sets forth a true and complete list of (i) all Intellectual Property that is owned by the Company or any of its Subsidiaries (the "Company Owned Intellectual Property") that is registered or subject to an application for registration or that is otherwise material to the business of the Company and its Subsidiaries taken as a whole and (ii) material Intellectual Property that the Company or one of its Subsidiaries is licensed or otherwise permitted by other persons to use,

including, without limitation, all Intellectual Property exclusively licensed to the Company or any of its Subsidiaries (the "Company Exclusively Licensed Intellectual Property"). Except as have not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company, (A) the Company or any of its Subsidiaries has the exclusive title to the Company Owned Intellectual Property that is registered or subject to an application for registration, free and clear of all Encumbrances other than Permitted Encumbrances, (B) all Company Owned Intellectual Property that is registered or subject to an application for registration is subsisting, valid and enforceable, (C) the Company or one of its Subsidiaries owns, or is licensed or otherwise permitted to use (in each case, free and clear of all Encumbrances other than Permitted Encumbrances) all Intellectual Property used or held for use in the business of the Company and its Subsidiaries taken as a whole, (D) the use of any Intellectual Property by the Company or its Subsidiaries (x) does not, to the Knowledge of the Company, infringe on or otherwise violate the rights of any person in respect of any Intellectual Property and (y) is in accordance with any applicable agreement pursuant to which the Company or any of its Subsidiaries possesses the right to use any Intellectual Property, (E) none of the Company or its Subsidiaries has received during the past three years preceding the date hereof any written notice of any threatened claim with respect to any Intellectual Property used or held for use in the business of the Company and its Subsidiaries (including, but not limited to, any cancellation, opposition or other action before an intellectual property registry), (F) to the Knowledge of the Company, no person is infringing on or otherwise violating any right of the Company or its Subsidiaries with respect to any Company Owned Intellectual Property or any Company Exclusively Licensed Intellectual Property, (G) neither the Company nor any of its Subsidiaries has during the past three years preceding the date hereof asserted or threatened to assert any claims of infringement or other violations of its rights in or to the Company Owned Intellectual Property or the Company Exclusively Licensed Intellectual Property and (H) to the Knowledge of the Company, no Company Owned Intellectual Property is being used or enforced in a manner that could reasonably be expected to result in the abandonment, cancellation or unenforceability of such Company Owned Intellectual Property. The Company and its Subsidiaries have timely made all filings and payments with the appropriate foreign and domestic agencies required to maintain in subsistence all Company Owned Intellectual Property that is registered or subject to an application for registration. Each of the Company and its Subsidiaries has taken actions reasonably necessary to maintain the secrecy of all trade secrets which constitute Company Owned Intellectual Property to the extent used or held for use in the business of the Company and its Subsidiaries. Except as have not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company, to the Knowledge of the Company, each of the Company and its Subsidiaries is in compliance with all applicable Laws pertaining to information privacy and security. For purposes of this Agreement, "Intellectual Property" means all trademarks, service marks, trade names, brand names, Internet domain names, logos, certification marks, trade dress and other indications of origin, the goodwill associated

with the foregoing and registrations or applications for registration in any jurisdiction, foreign or domestic, of the foregoing and any extensions, modifications or renewals thereof; designs, industrial models, all patents, applications for patents (including divisions, continuations, continuations in part and renewal applications), and any renewals, extensions or reissues thereof, in any jurisdiction, foreign or domestic; all nonpublic information, processes, product specifications, formulae, trade secrets, inventions, know-how, databases and other confidential information (collectively, "Trade Secrets") and rights in any jurisdiction, foreign or domestic, to limit the use or disclosure thereof by any person; all writings and other published or unpublished works of authorship, whether copyrightable or not (including computer software, source code and object code versions thereof and all related documentation), in any jurisdiction, foreign or domestic; all copyrights, any registrations or applications for registration thereof in any jurisdiction, foreign or domestic, and any extensions, modifications or renewals thereof; and all similar intellectual property or proprietary rights.

SECTION 3.17 Environmental Liabilities. Except as have not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company:

(a) The Company and each of its Subsidiaries currently is and since January 1, 2005, has been in compliance with all applicable Environmental Laws.

(b) The Company and each of its Subsidiaries has obtained and currently possesses all permits required under applicable Environmental Laws.

(c) None of the Company or its Subsidiaries has received any written notice or claim against it alleging a Release or the presence of Hazardous Substances or violation of or liability under any Environmental Laws at any location owned, leased or in control of the Company or any of its Subsidiaries, other than such notices or claims that have been resolved in all respects.

(d) None of the Company or its Subsidiaries (i) is or may be liable to any person or entity under any applicable Environmental Law as a result of a Release or threatened Release of any Hazardous Substance at any location owned, leased or in the control of the Company or any of its Subsidiaries or the exposure to Hazardous Substances generated by the Company or any of its Subsidiaries or (ii) is potentially responsible for Remedial Measures at any location, other than such notices or claims that have been resolved in all respects. None of the Company or its Subsidiaries has received any written notice or claim alleging any of the foregoing.

(e) None of the Company or its Subsidiaries is a party to any pending judicial or administrative proceedings or, to the Knowledge of the Company, the

subject of any investigations or threatened proceedings by any Governmental Authority or person, pursuant to any Environmental Laws.

(f) For purposes of this Agreement, the following terms shall have the meanings assigned below:

(i) "Environmental Laws" shall mean any and all Laws, including common law, regulating or imposing liability or standards of conduct concerning pollution or protection of human health or the environment, including surface water, groundwater, ambient air, surface or subsurface soil, natural resources or wildlife habitat.

(ii) "Hazardous Substances" shall mean any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, polychlorinated biphenyls, urea-formaldehyde insulation, chemicals, solid wastes, hazardous wastes, toxic substances, asbestos, pollutants or contaminants defined as such in or regulated under any applicable Environmental Law.

(iii) "Release" means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing of Hazardous Substances (including the abandonment or discarding of barrels, containers or other closed receptacles containing Hazardous Substances) into the environment.

(iv) "Remedial Measures" shall mean any measures or actions required or undertaken to investigate, monitor, clean up, remove, treat, prevent, contain or otherwise remediate the presence or Release of any Hazardous Substance.

SECTION 3.18 Insurance Matters.

(a) Section 3.18(a) of the Company Disclosure Schedule lists all material policies and other forms of insurance, reinsurance and similar arrangements (including policies providing coverage with respect to so-called vicarious liability Laws) insuring the Company and its Subsidiaries and their respective assets, properties and operations (the "Company Insurance Contracts"). All such Company Insurance Contracts are in full force and effect. All premiums due and payable under all Company Insurance Contracts covering all periods up to and including the date hereof have been paid, and neither the Company nor any of its Subsidiaries is otherwise in material breach or default (including any such breach or default with respect to the giving of notice), and no event has occurred which, with notice or the lapse of time, would constitute such a material breach or default of the Company or any of its Subsidiaries, or permit termination or modification by the insurance carrier, under any Company Insurance

Contract. There is no material claim pending under any of such policies or bonds as to which coverage has been denied or disputed by the underwriters of such policies or bonds. The Company has not received notice of and, to the Knowledge of the Company, there has been no threatened termination of, or material premium increase with respect to, any of such policies. Since January 1, 2008, neither the Company nor any of its Subsidiaries has received any written notice to the effect that (i) the financial condition of any insurer or reinsurer party to any Company Insurance Contract is materially impaired with the result that a default thereunder may reasonably be anticipated or (ii) there is a dispute with respect to any material amounts recoverable or payable by the Company or any of its Subsidiaries pursuant to any Company Insurance Contract.

(b) Prior to the date of this Agreement, the Company has made available to Parent a true and complete copy of the material reports listed on Section 3.18(b) of the Company Disclosure Schedule that have been prepared by actuaries, independent or otherwise, with respect to the insurance reserves of or the policies issued by the Company or any Subsidiary of the Company since January 1, 2008, in each case, along with all material attachments, addenda, supplements and modifications thereto (such reports, together with any other similar material reports prepared prior to the date hereof, the "Company Reserve Analyses"). Each Company Reserve Analysis was based upon, in all material respects, an accurate inventory of insurance policies in force and self-insured risks for the Company and any Subsidiaries of the Company, as the case may be, at the relevant time of preparation and was prepared in conformity with generally accepted actuarial principles in effect at such time, consistently applied (except as may be noted therein).

(c) Section 3.18(c) of the Company Disclosure Schedule identifies each type of insurance offered by the Company or its Subsidiaries or their respective Affiliates and franchisees to renters of rental vehicles.

SECTION 3.19 Franchise Matters.

(a) To the Knowledge of the Company, each franchisee, licensee, operator and dealer (collectively, "franchisees") of the Company and its Subsidiaries operates, and since January 1, 2008 has operated, substantially in accordance with the policies, procedures and guidelines of the Company and its Subsidiaries as the same may be, or have been, in effect from time to time. There is no pending or threatened dispute between any franchisee on the one hand, and the Company and its Subsidiaries on the other hand, that is material to the Company and its Subsidiaries, taken as a whole.

(b) The Company has made available to Parent a true and complete copy of the franchise disclosure document and other disclosure statements of the Company or of any of its Subsidiaries in connection with its sale of franchises or licenses to subfranchisors and franchisees (the "Offering Circulars"), which are current as of the date hereof. As of the dates of the respective offerings under such Offering Circulars: (i)

such documents complied with the requirements of the Federal Trade Commission Act of 1914, as amended, to the extent applicable, and all applicable Laws, except, as has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company, and (ii) none of such documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

SECTION 3.20 Vehicle Purchases and Leases. Section 3.20 of the Company Disclosure Schedule sets forth each outstanding vehicle purchase or lease order placed by the Company or any of its Subsidiaries with vehicle manufacturers or any other person as of the date hereof, specifying (i) the date of the relevant order, (ii) the number, type and year model of the vehicles covered by such order, (iii) the purchase price per vehicle, (iv) the expected date of delivery thereof and (v) whether each such vehicle is subject to a vehicle repurchase program.

SECTION 3.21 Business Activities. Each of Rental Car Finance Corp., Dollar Thrifty Automotive Group Canada Inc. and TCL Funding Limited Partnership is engaged solely in (x) the business of acquiring, selling, leasing, financing or refinancing vehicles owned or operated by, or leased or rented to or by, the Company or any of its Subsidiaries, including automobiles, trucks, tractors, trailers, vans, sport utility vehicles, buses, campers, motor homes, motorcycles and other motor vehicles and/or related rights (including under leases, manufacturer warranties and buy-back programs, and insurance policies) and/or assets (including managing, exercising and disposing of any such rights and/or assets), all proceeds thereof and all rights (contractual and other), collateral and other assets relating thereto, and (y) any business or activities incidental or related to such business.

SECTION 3.22 Company Information. None of the information relating to the Company and its Subsidiaries that is provided by the Company or its Representatives specifically for inclusion or incorporation by reference in (a) the registration statement on Form S-4 to be filed with the SEC by Parent in connection with the issuance of shares of Parent Common Stock in the Merger (as amended or supplemented from time to time, the "Form S-4") will, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented and at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading or (b) the proxy statement/prospectus relating to the Company Stockholders Meeting (together with any amendments thereof or supplements thereto, in each case in the form or forms mailed to the Company's stockholders, the "Proxy Statement") will, at the date the Proxy Statement is first mailed to the stockholders of the Company and at the time of the Company Stockholders Meeting, contain any untrue statement of a material

fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act. Notwithstanding the foregoing, no representation or warranty is made by the Company with respect to statements made or incorporated by reference in the Form S-4 or the Proxy Statement based on information supplied by Parent or Merger Sub specifically for inclusion or incorporation by reference in the Form S-4 or the Proxy Statement.

SECTION 3.23 Opinions of Financial Advisors. The Board of Directors of the Company has received the opinion of each of Goldman, Sachs & Co. and J.P. Morgan Securities Inc., in each case, dated the date hereof, to the effect that, as of the date hereof and based upon and subject to the matters and limitations set forth therein, the Total Consideration to be paid to the holders (other than Parent and its affiliates) of shares of Company Common Stock pursuant to this Agreement is fair from a financial point of view to such holders. For purposes of this Section 3.23, the "Total Consideration" shall mean the aggregate of the (i) Merger Consideration and (ii) Special Dividend Per Share Amount.

SECTION 3.24 Broker's Fees. No broker, investment banker, financial advisor or other person, other than Goldman, Sachs & Co. and J.P. Morgan Securities Inc., the fees and expenses of which will be paid by the Company in accordance with the Company's agreements with Goldman, Sachs & Co. and J.P. Morgan Securities Inc., is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses, in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or its Subsidiaries. The Company has made available to Parent a true and complete copy of each agreement between the Company or any of its Subsidiaries and any person entitled to such fee or expense reimbursement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except (i) as disclosed in the Parent SEC Reports filed with or furnished to the SEC on or after January 1, 2008 and prior to the date hereof (excluding any cautionary language set forth in any risk factor section or forward-looking statements contained therein) or (ii) as disclosed in the disclosure schedule (the "Parent Disclosure Schedule") delivered by Parent to the Company prior to the execution of this Agreement (which schedule sets forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in this Article IV, or to one or more of Parent's covenants contained herein, provided, however, that disclosure in any section of such schedule shall apply only to the

indicated Section of this Agreement except to the extent that it is reasonably apparent on the face of such disclosure that such disclosure is relevant to another Section of this Agreement, provided, further, that notwithstanding anything in this Agreement to the contrary, the mere inclusion of an item in such schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would be reasonably likely to have a Material Adverse Effect on Parent), each of Parent and Merger Sub hereby represents and warrants to the Company as follows:

SECTION 4.01 Corporate Organization. Parent and each of its Subsidiaries (including Merger Sub) is an entity duly organized, validly existing and in good standing (to the extent such concepts are recognized in the applicable jurisdiction) under the Laws of its jurisdiction of organization. Each has the requisite power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business and is in good standing (to the extent such concepts are recognized in the applicable jurisdiction), in each jurisdiction in which the nature of the business now conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent. True, complete and correct copies of (i) the Certificate of Incorporation of Parent (the "Parent Certificate") and the Bylaws of Parent (the "Parent Bylaws") and (ii) the certificate of incorporation and bylaws or other organizational or constitutive documents or governing instruments of each active and material Subsidiary of Parent and Merger Sub, in each case as currently in effect, have previously been made available to the Company.

SECTION 4.02 Capitalization.

(a) The authorized capital stock of Parent consists of 2,200,000,000 shares, par value $0.01 per share (the "Parent Capital Stock"), which are divided into the following two classes: (i) 2,000,000,000 shares of Parent Common Stock and (ii) 200,000,000 shares of Parent preferred stock (the "Parent Preferred Stock"). As of the close of business on March 31, 2010, (A) 411,366,789 shares of Parent Common Stock were issued and outstanding, and (B) no shares of Parent Preferred Stock were issued and outstanding. As of the close of business on March 31, 2010, no shares of Parent Capital Stock were reserved for issuance except for up to 17,700,000 shares of Parent Common Stock reserved for issuance under Parent's 2008 Omnibus Incentive Plan and up to 3,000,000 shares of Parent Common Stock reserved for issuance under Parent's Employee Stock Purchase Plan (including shares that are issued and outstanding under such plan). All of the issued and outstanding shares of Parent Capital Stock have been and all shares of Parent Capital Stock that may be issued prior to the Effective Time when issued will be, duly authorized and validly issued and fully paid, nonassessable and free of preemptive rights. The shares of Parent Common Stock to be issued pursuant to

the Merger will be duly authorized and validly issued and, at the Effective Time, will be fully paid, nonassessable and free of preemptive rights.

(b) No bonds, debentures, notes or other indebtedness having the right to vote on any matters on which stockholders may vote in respect of Parent or any of its Subsidiaries are issued or outstanding.

(c) Except for this Agreement and the issued and outstanding 5.25% Convertible Senior Notes of Parent, none of Parent and its Subsidiaries has or is bound by any outstanding subscriptions, options, warrants, calls, rights, convertible or exchangeable securities, "phantom" stock rights, stock appreciation rights, stock-based performance units, commitments or agreements of any character (i) calling for the purchase, transfer or issuance of, or the payment of any amount based on, any shares of Parent Capital Stock or capital stock of any of Parent's Subsidiaries, voting securities of or any other equity interests in Parent or any securities representing the right to purchase or otherwise receive any shares of Parent Capital Stock, voting securities of or other equity interests in Parent or any of its Subsidiaries, (ii) obligating Parent or any of its Subsidiaries to issue, grant, extend or enter into any such subscription, option, warrant, call, right, convertible or exchangeable security, "phantom" stock right, stock appreciation right, stock-based performance unit, commitment or agreement or (iii) giving any person the right to receive any economic benefit or right similar to or derived from the economic benefits and rights accruing to holders of capital stock of, or other equity interests in, Parent or any of its Subsidiaries.

(d) There are no contractual obligations of Parent or any of its Subsidiaries: (i) to repurchase, redeem or otherwise acquire any shares of Parent Capital Stock or capital stock of any of Parent's Subsidiaries, voting securities of, or any other equity interests in Parent or its Subsidiaries or any securities representing the right to purchase or otherwise receive any shares of Parent Capital Stock, or any capital stock, voting securities of or any other equity interests in Parent or any of its Subsidiaries or (ii) pursuant to which Parent or any of its Subsidiaries is or could be required to register shares of Parent Capital Stock or other securities under the Securities Act.

(e) Except for the Amended and Restated Stockholders Agreement, dated as of November 20, 2006, as the same may be amended from time to time, among Parent, Clayton, Dubilier & Rice Fund VII, L.P., CDR CCMG Co-Investor L.P., CD&R Parallel Fund VII, L.P., Carlyle Partners IV, L.P., CP IV Co-investment, L.P., CEP II U.S. Investments, L.P., CEP II Participations S.a.r.l SICAR, ML Global Private Equity Fund, L.P., Merrill Lynch Ventures L.P. 2001, ML Hertz Co-Investor, L.P. and CMC-Hertz Partners, L.P., there are no voting trusts or other agreements or understandings to which Parent or any of its Subsidiaries is a party relating to the voting of any Parent Capital Stock, or any capital stock, voting securities of or any equity interests in Parent or any of its Subsidiaries. Neither Parent nor any of its Subsidiaries owns any shares of capital stock of or other voting or equity interests in (including any securities exercisable

or exchangeable for or convertible into shares of capital stock of or other voting or equity interests in) any other person.

(f) All of the issued and outstanding shares of capital stock, voting securities of, or other equity interests in, each of Parent's Subsidiaries are owned by Parent, directly or indirectly, free and clear of any Encumbrance, other than Permitted Encumbrances, and all of such shares or equity interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(g) The authorized capital stock of Merger Sub consists of 100 shares of common stock, par value $0.01 per share, all of which are validly issued and outstanding. All of the issued and outstanding shares of Merger Sub are directly or indirectly owned by Parent. Merger Sub does not have and is not bound by any outstanding subscriptions, options, warrants, calls, rights, commitments or agreements of any character calling for the purchase, transfer or issuance of, or the payment of any amount based on, any shares of Merger Sub capital stock, voting securities of or any other equity securities or any securities representing the right to purchase or otherwise receive any shares of Merger Sub capital stock, voting securities of or other equity interests in Merger Sub.

SECTION 4.03 Authority; No Violation.

(a) Each of Parent and Merger Sub has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby (including the Merger). The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved by the Board of Directors of Parent and Merger Sub, and this Agreement, the Merger and the other transactions contemplated hereby have been adopted and approved by the sole stockholder of Merger Sub. No other corporate proceedings on the part of Parent or Merger Sub, are necessary to approve this Agreement or to consummate the transactions contemplated hereby (including the Merger). This Agreement has been duly and validly executed and delivered by each of Parent and Merger Sub and (assuming the due authorization, execution and delivery by the Company) constitutes the valid and binding obligation of each of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and subject to general principles of equity).

(b) Neither the execution and delivery of this Agreement by Parent and Merger Sub nor the consummation by Parent and Merger Sub of the transactions contemplated hereby will: (i) violate any provision of the Parent Certificate, the Parent Bylaws or the certificate of incorporation or bylaws or other organizational or constitutive documents or governing instruments of any material Subsidiary of Parent

(including Merger Sub) or (ii) assuming that the consents, approvals and filings referred to in Section 4.04 are duly obtained and/or made: (A) violate any Law applicable to Parent, its Subsidiaries (including Merger Sub) or any of their respective properties or assets, (B) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, require any consent or approval of any person under, result in or permit the termination of or a right of termination or cancellation under, the acceleration of the performance required by, or other adverse change of any right or obligation under any provision of any agreement or other instrument binding upon Parent or any of its Subsidiaries or any license, franchise, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or business of Parent and its Subsidiaries or (C) result in the creation or imposition of any Encumbrance, other than Permitted Encumbrances, on any asset of Parent or any of its Subsidiaries, except, in the case of the foregoing clause (ii) only, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent.

(c) No vote of the holders of outstanding securities of Parent is required by the Parent Certificate, Parent Bylaws, by Law or otherwise to approve and adopt this Agreement or to consummate the Merger or the other transactions contemplated hereby.

SECTION 4.04 Consents and Approvals. No consent, approval, order, notification or authorization of, action, nonaction by or in respect of, waiver, clearance or registration, declaration or filing with, any Governmental Authority is required by or with respect to Parent or any of its Subsidiaries (including Merger Sub) in connection with the execution and delivery of this Agreement by Parent and Merger Sub or the consummation by Parent and Merger Sub of the Merger or the other transactions contemplated by this Agreement, except for those required under or in relation to: (a) the applicable requirements of the HSR Act (including the HSR Approval); (b) the applicable requirements of the Competition Act (including the CBC Approval); (c) any applicable requirements of any other Antitrust Laws listed on Section 4.04(c) of the Parent Disclosure Schedule; (d) the registration of the issuance of shares of Parent Common Stock comprising the Stock Consideration in the Merger under the Securities Act; (e) the approval of listing of such shares of Parent Common Stock on the NYSE; (f) the filings pursuant to the Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby; (g) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and the filing of appropriate documents with the relevant authorities of other states in which the Company is qualified to do business; (h) the filing of the insurance regulatory approvals listed on Section 4.04(h) of the Parent Disclosure Schedule; (i) approval of the airport authorities listed on Section 4.04(i) of the Parent Disclosure Schedule with respect to the corresponding airport concessions, licenses and leases listed on Section 4.04(i) of the Parent Disclosure Schedule; and (j)

those which if not obtained or made would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent.

SECTION 4.05 Parent SEC Reports; Financial Statements; No Undisclosed Liabilities; Internal Controls.

(a) Since January 1, 2008, Parent has timely filed all forms, reports and documents required to be filed by it with the SEC, all of which have complied as of their respective filing dates or, if amended or superseded by a subsequent filing prior to the date hereof, the date of the last such amendment or superseding filing, in all material respects with all applicable requirements of the Securities Act and the Exchange Act. None of the forms, reports or documents filed by Parent with the SEC since such date (the "Parent SEC Reports"), or that will be filed with the SEC after the date hereof, including any financial statements or schedules included or incorporated by reference therein, at the time filed (and, in the case of a registration statement, as of its effective date) or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of the last such amendment or superseding filing, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The financial statements of Parent included or incorporated by reference in the Parent SEC Reports (including the related notes and schedules) (i) have been prepared from, and are in accordance with, the books and records of Parent and its Subsidiaries, (ii) fairly present in all material respects the consolidated results of operations, cash flows, changes in stockholders' equity and consolidated financial position of Parent and its Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth (subject, in the case of unaudited financial statements, to normal year-end audit adjustments), (iii) complied as to form, as of their respective dates of filing with the SEC, in all material respects with published rules and regulations of the SEC with respect thereto and (iv) have been prepared in accordance with GAAP consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto. The books and records of Parent and its Subsidiaries have been and are being maintained in all material respects in accordance with GAAP.

(c) None of Parent or any of its Subsidiaries has any liability or obligation of any nature whatsoever (whether absolute, accrued, known or unknown, contingent or otherwise and whether due or to become due) that is required to be set forth on a balance sheet prepared in accordance with GAAP, except for those liabilities and obligations: (i) that are reflected or reserved against in Parent's consolidated balance sheet dated as of December 31, 2009 included in the Parent SEC Reports, including any notes thereto, (ii) arising out of this Agreement and (iii) liabilities and obligations incurred in the ordinary course of business consistent with past practice since December

31, 2009, which would not be prohibited by this Agreement and that have not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent.

(d) Parent has designed a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) to provide reasonable assurance regarding the reliability of financial reporting and such system is effective at the reasonable assurance level. Parent (i) has implemented and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) designed to ensure that material information relating to Parent and its consolidated Subsidiaries is made known to Parent's management as appropriate to allow timely decisions regarding required disclosure and such controls and procedures are effective in ensuring such disclosures and communications, and (ii) has disclosed, based on its most recent evaluation prior to the date hereof, to Parent's outside auditors and the audit committee of Parent's Board of Directors (and made summaries of such disclosures available to the Company): (x) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) which are reasonably likely to adversely affect Parent's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in Parent's internal controls over financial reporting. Each of Parent and its Subsidiaries has substantially addressed any such significant deficiency, material weakness or fraud. As of the date hereof, there is no reason to believe that Parent's outside auditors, chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act, without qualification, when required.

(e) Each of the principal executive officer and the principal financial officer of Parent (or each former principal executive officer and each former principal financial officer of Parent, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act with respect to the Parent SEC Reports, and the statements contained in such certifications were true and correct on the date such certifications were made. Neither Parent nor any of its Subsidiaries has outstanding "extensions of credit" or has arranged any outstanding "extensions of credit" to directors or executive officers in violation of Section 402 of the Sarbanes-Oxley Act.

(f) Since January 1, 2008, (i) none of Parent or any of its Subsidiaries nor, to the Knowledge of Parent, any of their respective directors, officers, employees, auditors, accountants or Representatives has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Parent, its Subsidiaries or their respective internal accounting controls,

including any material complaint, allegation, assertion or claim that Parent or any of its Subsidiaries has engaged in questionable accounting or auditing practices and (ii) no attorney representing Parent or any of its Subsidiaries, whether or not employed by Parent or any of its Subsidiaries, has reported evidence of a material violation of securities Laws, breach of fiduciary duty or similar violation by Parent, its Subsidiaries or any of their respective officers, directors, employees or agents to the Board of Directors of Parent or any committee thereof or to the chief executive officer or general counsel of Parent in accordance with Section 307 of the Sarbanes-Oxley Act.

SECTION 4.06 Absence of Certain Changes or Events.

(a) Since December 31, 2009 and prior to the date hereof, no change, effect, event, circumstance, occurrence, state of facts or development (or with respect to any change, effect, event, circumstance, occurrence, state of facts or development existing prior to December 31, 2009, any worsening thereof) has occurred that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent.

(b) Since December 31, 2009 and prior to the date hereof, Parent and its Subsidiaries have carried on their respective businesses in all material respects in the ordinary course of business consistent with past practice, except for the negotiation, execution, delivery and performance of this Agreement.

SECTION 4.07 Legal Proceedings. There is no suit, action, claim, proceeding or investigation by or before any Governmental Authority or arbitrator pending or, to the Knowledge of Parent, threatened against Parent or any of its Subsidiaries or to which any of their respective properties or assets are subject that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent. There is no judgment, decree, injunction, rule or order of any Governmental Authority or arbitrator outstanding against, or, to the Knowledge of Parent, investigation by any Governmental Authority involving, Parent or any of its Subsidiaries or any of their respective properties or assets that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent.

SECTION 4.08 Taxes and Tax Returns. Parent and each of its Subsidiaries have duly and timely filed all material Tax Returns required to be filed by them on or prior to the date hereof, and have paid all material Taxes (whether imposed directly or through withholding) required to be paid or claimed to be due (other than those being contested in good faith and for which adequate reserves have been provided).

SECTION 4.09 Compliance with Applicable Law. Parent and each of its Subsidiaries holds all licenses, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses as currently conducted, which are being

operated in compliance therewith, and all such licenses, franchises, permits and authorizations are in full force and effect, except for such licenses, franchises, permits and authorizations the failure of which to possess or be in full force and effect or to be complied with has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent. Since January 1, 2006, Parent and each of its Subsidiaries has been in compliance with and is not in default or violation of any Law applicable to Parent and its Subsidiaries, the properties and assets of Parent and its Subsidiaries and the business of Parent and its Subsidiaries taken as a whole, except to the extent any non-compliance with any such Law has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent.

SECTION 4.10 Parent Information. None of the information relating to Parent and its Subsidiaries that is provided by Parent or its Representatives specifically for inclusion or incorporation by reference in (a) the Form S-4 will, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented and at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading or (b) the Proxy Statement will, at the date the Proxy Statement is first mailed to the stockholders of the Company and at the time of the Company Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Form S-4 will comply as to form in all material respects with the requirements of the Exchange Act. Notwithstanding the foregoing, no representation or warranty is made by Parent with respect to statements made or incorporated by reference in the Form S-4 or the Proxy Statement based on information supplied by the Company specifically for inclusion or incorporation by reference in the Form S-4 or the Proxy Statement.

SECTION 4.11 No Business Activities. Merger Sub has not conducted any activities other than in connection with the organization of Merger Sub, the negotiation and execution of this Agreement and the consummation of the transactions contemplated hereby.

SECTION 4.12 Sufficient Funds. Parent and its Subsidiaries will have at the Effective Time sufficient funds to pay in full the Cash Consideration and all other cash amounts to be paid by Parent or Merger Sub pursuant to this Agreement.

SECTION 4.13 Interested Stockholder. Neither Parent nor any of its Subsidiaries is, or has been at any time during the period commencing three years prior to the date hereof through the date hereof, an "interested stockholder" of the Company, as such term is defined in Section 203 of the DGCL.

SECTION 4.14 Broker's Fees. No broker, investment banker, financial advisor or other person, other than Barclays Capital, the fees and expenses of which will be paid by Parent, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses, in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or its Subsidiaries.

ARTICLE V

COVENANTS

SECTION 5.01 Conduct of Business of the Company. Except as contemplated or permitted by this Agreement or with the prior written consent of Parent (which consent Parent shall use its reasonable best efforts to provide or withhold within five days of the Company's request therefor, and which consent otherwise shall not be unreasonably withheld, delayed or conditioned) during the period from the date of this Agreement until the Effective Time, or the date (if any) on which this Agreement is terminated pursuant to Section 8.01, the Company shall, and shall cause each of its Subsidiaries to, (x) conduct its business in the ordinary course in all material respects consistent with past practice, (y) use reasonable best efforts to maintain and preserve intact its business organization and advantageous business relationships and retain the services of its key officers and key employees and (z) take no action that is intended to or would reasonably be expected to adversely affect or materially delay the ability of any party to obtain any necessary approvals of any Governmental Authority required for the transactions contemplated hereby or to perform its covenants and agreements under this Agreement or to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Effective Time, or the date (if any) on which this Agreement is terminated pursuant to Section 8.01, except as set forth in Section 5.01 of the Company Disclosure Schedule and except as permitted by this Agreement, the Company shall not, and shall not permit its Subsidiaries to, without the prior written consent of Parent (which consent Parent shall use its reasonable best efforts to provide or withhold within five days of the Company's request therefor, and which consent otherwise shall not be unreasonably withheld, delayed or conditioned):

(a) incur or assume any Indebtedness or assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the Indebtedness or other obligations of any other person (other than a wholly owned Subsidiary of the Company), or make or forgive any loan or advance to, any person (other than a wholly owned Subsidiary of the Company), except for (i) Indebtedness in an amount that does not exceed $10,000,000 in the aggregate, (ii) the issuance of letters of credit or surety bonds required to be obtained by the Company or any of its Subsidiaries in the ordinary course of

business consistent with past practice, (iii) $300 million of additional fleet financing incurred by Rental Car Finance Corp. and/or Dollar Thrifty Funding Corp. to be completed no later than September 30, 2010 as required under the terms of the Company's Series 2010-1 asset backed notes, as partial replacement financing for the Company's Series 2006-1 asset backed medium term notes that may be refinanced pursuant to clause (v)(y) below), (iv) the Canadian Fleet Securitization Program on the terms set forth in Section 5.01(a)(iv) of the Company Disclosure Schedule (the "New Canadian Facility"), and (v) fleet financing (in a principal amount not to exceed the then-outstanding principal amount of any fleet financing being replaced, modified or extended) incurred by any of Rental Car Finance Corp., Dollar Thrifty Automotive Group Canada Inc., DTGC Car Rental Limited Partnership, Dollar Thrifty Funding Corp. or TCL Funding Limited Partnership to replace, modify or extend (y) any fleet financing in place at such time, if such then-outstanding fleet financing would require regularly scheduled amortization payments within 180 days of the date on which such replacement, modification or extension occurs, other than the Company's Series 2005-1 asset backed medium term notes, but including the Company's Series 2006-1 asset backed medium term notes (the "Series 2006 Notes") in the amount of $600 million that will require scheduled amortization payments beginning in December 2010, provided, that in the case of any such fleet financing to replace, modify or extend the Company's Series 2006 Notes, the proceeds of such financing shall be applied to repay or repurchase outstanding Series 2006 Notes prior to the Closing Date, (z) any fleet financing under which a mandatory prepayment or rapid amortization event has occurred; provided, that the Company shall consult with Parent regarding the terms of any such fleet financing described in this clause (v) and shall use reasonable best efforts in cooperation with Parent to procure that any such fleet financing described in this clause (v) shall (1) not contain any change-in-control provision that would be triggered by the Merger or the other transactions contemplated by this Agreement, (2) not conflict with the terms of any Indebtedness of Parent or its Subsidiaries (it being understood that Parent acknowledges that the Company has no responsibility for knowledge of the terms of any Indebtedness of Parent or its Subsidiaries and Parent shall have sole responsibility for identifying any potentially conflicting terms) and (3) permit the use by Parent or its Subsidiaries (whether by sublease or otherwise, and as needed by Parent and its Subsidiaries in the ordinary course operation of their vehicle rental business) of vehicles owned by the Company or its Subsidiaries (terms described in clauses (1) through (3) being "Favorable Terms"); provided, further, that (except in the case of a willful and material breach of the Company's obligation to use its reasonable best efforts) no failure or inability of the Company to procure any such provisions or other provisions requested by Parent in any fleet financing shall constitute a violation or breach of this Section 5.01(a);

(b) except with respect to the Company Credit Agreement or the replacement of any fleet financing pursuant to Section 5.01(a), redeem, repurchase, defease, cancel or otherwise acquire any Indebtedness of the Company or any of its Subsidiaries (other than at stated maturity and other than the making of any required amortization payments and mandatory prepayments, in each case in accordance with the terms of the instrument or agreements, as the case may be, governing such Indebtedness as in effect on the date hereof);

(c) amend or modify the Medium Term Notes so as to delete or adversely affect any Favorable Terms therein;

(d) adjust, split, combine or reclassify any of its capital stock, voting securities or other equity interests;

(e) make, declare or pay any dividend, or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire (except for the acceptance or withholding of shares of Company Common Stock in payment of the exercise price or withholding Taxes incurred by any employee or director in connection with the exercise of options to acquire Company Common Stock or stock appreciation rights or the vesting of restricted shares or settlement of other equity-based awards in respect of Company Common Stock granted under a Company Benefit Plan), any shares of its capital stock, voting securities or other equity interests or any securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock, voting securities or other equity interests (in each case, except the Special Dividend and dividends paid by any wholly owned subsidiary to its parent);

(f) issue, sell, pledge, dispose of, grant or encumber any shares of capital stock or other securities of the Company or any of its Subsidiaries or any subscriptions, options, warrants, calls, rights, "phantom" stock rights, stock appreciation rights, stock-based performance units or other rights of any kind to acquire shares of capital stock or other securities of the Company or any of its Subsidiaries, other than (i) issuances of capital stock or other securities issuable pursuant to Company Incentive Awards granted prior to the date hereof in accordance with the terms thereof which are outstanding on the date hereof and (ii) pledges or Encumbrances of the capital stock of the Company's Subsidiaries as required by the Company Credit Agreement;

(g) (i) except (w) as required by applicable Law, (x) for promotions or (y) normal performance-related merit increases in base salaries or base wages and benefit levels made in the ordinary course of business with respect to employees (including executive officers other than those set forth in Section 5.01(g) of the Company Disclosure Schedule) or directors of any of the Company or its

Subsidiaries, including in connection with performance reviews and merit increases during the Company's third fiscal quarter (in the case of performance-related merit increases, the total amount of such increases shall not exceed, (A) with respect to employees who have entered into change-in-control agreements or arrangements or employment agreements providing for severance payments or are participants in the 2010 Retention Plan for DTG Non-Officer Management Team, $750,660 and (B) with respect to other employees, $6,434,438 or (z) as required by the terms of any Company Benefit Plan, increase the wages or salaries of any past, present or future employee of any of the Company or its Subsidiaries, or (ii) except as required by applicable Law or the terms of any Company Benefit Plan as in effect on the date of this Agreement or as modified after the date hereof to the extent permitted by Section 5.01(h), pay or provide, or increase or accelerate the accrual rate, vesting or timing of payment or funding of, any other compensation, benefits or other rights of any employee of any of the Company or its Subsidiaries (including, without limitation, any new or increased incentive compensation (cash or equity) or severance entitlement);

(h) (i) establish, adopt or become a party to any new employee benefit or compensation plan, program, commitment or agreement or amend or terminate any Company Benefit Plan, except (A) as required by applicable Law (including any amendments to existing arrangements required to make such arrangements comply with the requirements of Section 409A of the Code so long as such amendments do not materially increase the cost to the Company) or the terms of any Company Benefit Plan as in effect on the date of this Agreement or (B) with respect to employees who are not senior executives or directors, in the ordinary course of business consistent with past practice (other than any change-in-control agreements or arrangements), (ii) establish, adopt or become a party to any new, or amend or terminate any existing, change-in-control agreement or arrangement with any employee of the Company or its Subsidiaries or (iii) enter into any collective bargaining agreement without providing Parent prior written notice and the opportunity to review and comment on the terms of such agreement;

(i) (i) sell, transfer, license, lease, mortgage, encumber or otherwise dispose of any properties or assets to any person, other than (v) sales, transfers, licenses, leases, mortgages, Encumbrances or other disposals to the Company or any of its Subsidiaries, (w) sales, transfers, licenses, leases, mortgages, encumbrances or disposals of vehicles in the ordinary course of business consistent with past practice, (x) with respect to mortgages and encumbrances, Permitted Encumbrances, (y) leases of real property in the ordinary course of business consistent with past practice and (z) sales of properties or assets with a sale price that does not exceed $1,000,000 individually or $5,000,000 in the aggregate, or (ii) cancel, release or assign any claims against any person that exceed $1,000,000 individually or $5,000,000 in the aggregate;

(j) enter into any new line of business or, except as required by changes in applicable Law, regulation or policies imposed by any Governmental Authority or changes made in response to market conditions, change in any material respect its current operating policies;

(k) make any investment (whether by merger, consolidation, acquisition of stock or assets, joint venture or otherwise) either by purchase of stock or securities, contributions to capital or purchase of any division or business or all or any significant portion of the property or assets of any person (other than acquisitions of the stock, securities, properties or assets not in excess of $2,000,000 individually or $6,000,000 in the aggregate or of a wholly owned Subsidiary of the Company in the ordinary course of business consistent with past practice);

(l) commence or settle any action, lawsuit or proceeding, other than (i) the commencement of any such proceedings in the ordinary course of business, (ii) the settlement of automobile accident liability claims incurred in the ordinary course of business and that have not had and are not reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, and (iii) the settlement of any such proceedings or claims (x) for monetary payment of less than $5,000,000 individually and $10,000,000 in the aggregate and (y) which settlement does not impose any material restriction or obligation on the Company or any of its Affiliates (including, after the Closing, Parent and its Affiliates);

(m) amend its certificate of incorporation, bylaws or other similar governing documents;

(n) except for (i) the Company Credit Agreement and (ii) with respect to any agreement, contract, lease, license, arrangement or commitment that (A) is entered into on an arm's length basis with an unaffiliated third party, (B) is entered into in the ordinary course of business consistent with past practice, (C) would not purport on its face to bind Parent and its Subsidiaries (other than the Company and its Subsidiaries) following the Closing Date and (D) with respect to any new vehicle purchase Contract, does not have a term exceeding one year, unless such Contract may be terminated at any time after one year without payment of penalty or premium, enter into, assume or amend in any material respect, or grant any release or relinquish any material rights under, any Company Material Contract, or any other agreement, contract, lease, license, arrangement or commitment that, if entered into prior to the date hereof would constitute a Company Material Contract;

(o) extend the term of the Second Amended and Restated Data Processing Services Agreement, dated as of August 1, 2006, by and among the Company, Electronic Data Systems Corporation and EDS Information Services

L.L.C. (as amended from time to time), or otherwise amend such agreement in any respect that would reasonably be expected to have a material negative impact on Parent and its Subsidiaries or the integration of the businesses of Parent and the Company after the Closing;

(p) make any capital expenditures other than (i) capital expenditures that are not purchases of vehicles and are not in excess of $3,000,000 individually or $30,000,000 in the aggregate and (ii) purchases of vehicles; provided, that the provisions of clause (n)(ii)(D) and clause (q) are complied with;

(q) place firm commitments for physical delivery of any vehicle from any manufacturer under any annual purchase program, unless the projected date of physical delivery of such vehicle is scheduled to occur within 120 days from the date of such firm commitment; provided, that to the extent any manufacturer requires more than 120 days notice for the delivery of certain specialty vehicles, the Company or its Affiliate may place firm commitments for physical delivery of such specialty vehicles without regard to such 120 day limitation;

(r) adopt a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries (other than the Merger);

(s) implement or adopt any change in the Tax accounting or financial accounting principles, practices or methods, used by the Company or its Subsidiaries, other than as may be required by changes in applicable Law, GAAP or regulatory guidelines;

(t) (i) make any Tax election or take any position on a Tax Return filed on or after the date of this Agreement or adopt any method therein that is inconsistent with elections made, positions taken or methods used in preparing or filing similar returns in prior periods unless such position or election is pursuant to applicable Law or the Code, (ii) enter into any settlement or compromise of any Tax liability, (iii) file any amended Tax Return that would result in a change in Tax liability, taxable income or loss, (iv) change any annual Tax accounting period, (v) enter into any closing agreement relating to any Tax liability, or (vi) give or request any waiver of a statute of limitation with respect to any Tax Return, provided, that such election, settlement, amended Tax Return or any other action described in the foregoing portion of this Section 5.01(t) will not require prior written consent of Parent if all such actions, in the aggregate, would not reasonably be expected to result in a cost to the Company and its Subsidiaries in excess of $1,000,000;

(u) take or omit to take any action that is intended or would reasonably be expected, individually or in the aggregate, to result in any of the conditions set

forth in Section 7.01 or Section 7.02 not being satisfied or satisfaction of those conditions being materially delayed in violation of any provision of this Agreement;

(v) suspend or reduce the scope of their "like kind exchange", other than to the extent necessary in the event the Company or its Subsidiaries are required to make any amortization payments or mandatory prepayments under any fleet financing, whether due to monoline insurer insolvency or otherwise; or

(w) agree to take, make any commitment to take, authorize or adopt any resolutions of its board of directors in support of, any of the actions prohibited by this Section 5.01.

SECTION 5.02 Parent Forbearances. Except as set forth in Section 5.02 of the Parent Disclosure Schedule and except as permitted by this Agreement, neither Parent nor Merger Sub shall, nor shall Parent permit its Subsidiaries to, without the prior written consent of the Company (which consent the Company shall use its reasonable best efforts to provide or withhold within five Business Days of Parent's request therefor, and which consent otherwise shall not be unreasonably withheld, delayed or conditioned):

(a) amend, repeal or otherwise modify any provision of the Parent Certificate or the Parent Bylaws in a manner that would adversely affect Company, the stockholders of Company or the transactions contemplated by this Agreement;

(b) make, declare or pay any dividend, or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire (except for the acceptance or withholding of shares of Parent Common Stock in payment of the exercise price or withholding Taxes incurred by any employee or director in connection with the exercise of options to acquire Parent Common Stock or stock appreciation rights or the vesting of restricted shares or settlement of other equity-based awards in respect of Parent Common Stock granted under a benefit plan maintained by Parent, in each case as in effect on the date hereof), any shares of its capital stock, voting securities, other equity interests or any securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock, voting securities or other equity interests (except dividends paid by any wholly owned subsidiary to its parent or as required under the indenture applicable to the issued and outstanding 5.25% Convertible Senior Notes of Parent);

(c) grant any person any right to acquire shares of its capital stock, voting securities or other equity interests except for the issuance of stock options

to acquire Parent Common Stock to employees or directors of Parent or its Subsidiaries in the ordinary course of business, or the taking of any action to effect the exercise, cash-out or settlement of any restricted stock unit, stock option or performance share or other equity or equity-based award (other than in connection with an issuance of Parent Common Stock permitted by Section 5.02(d)(i));

(d) issue any additional shares of capital stock or other equity securities or other equity or equity-based awards, including cash-settled awards, except (i) the issuance of capital stock or other securities not in excess of 15% of the outstanding shares of Parent Common Stock in an underwritten transaction or otherwise on arms' length terms, (ii) issuances under any incentive compensation, stock purchase, stock bonus, restricted stock, stock option or other equity-based plan, program or arrangement of Parent as in effect on the date hereof, (iii) issuances under the indenture applicable to the issued and outstanding 5.25% Convertible Senior Notes of Parent and (iv) issuances of Parent Common Stock to the holders of the Company Common Stock and Adjusted Options to holders of Company Options in connection with the Merger;

(e) take or omit to take any action that is intended or would reasonably be expected, individually or in the aggregate, to result in any of the conditions set forth in Sections 7.01 and 7.03 not being satisfied or satisfaction of those conditions being materially delayed in violation of any provision of this Agreement; or

(f) agree to take, make any commitment to take, authorize or adopt any resolutions of its board of directors in support of, any of the actions prohibited by this Section 5.02.

SECTION 5.03 No Solicitation by the Company.

(a) From and after the date of this Agreement until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.01, and except as otherwise provided for in this Agreement, the Company shall not, and shall cause its Affiliates not to and shall not authorize or permit its and their respective directors, officers, employees, investment bankers, financial advisors, attorneys, accountants or other advisors, agents or representatives (collectively "Representatives") to, directly or indirectly: (i) solicit, initiate, knowingly facilitate or knowingly encourage the submission or making of any Company Competing Proposal, (ii) participate in any discussions or negotiations regarding, or furnish to any person any material nonpublic information in furtherance of (excluding, for the avoidance of doubt, information furnished to a current or prospective commercial counterparty (including any customer or supplier) of the Company or any of its Subsidiaries for the sole purpose of furthering an existing or prospective commercial arrangement with such person and, in

any event, not in contemplation of any Company Competing Proposal), any Company Competing Proposal or (iii) enter into any agreement regarding a Company Competing Proposal. The Company shall, and shall cause its Affiliates and its Representatives to, immediately cease and cause to be terminated all existing discussions or negotiations with any person conducted heretofore with respect to any Company Competing Proposal and promptly request the prompt return or destruction of all confidential information previously furnished, and the Company shall take all reasonably necessary actions to secure its rights and ensure the performance of any such person's obligations under any applicable confidentiality agreement to return or destroy such information. The Company shall take all actions necessary to enforce its rights under the provisions of any "standstill" agreement between the Company and any person (other than Parent), and shall not grant any waiver of, or agree to any amendment or modification to, any such agreement, to permit such person to submit a Company Competing Proposal. The Company shall ensure that its Representatives are aware of the provisions of this Section 5.03, and any violation of the restrictions contained in this Section 5.03 by its Board of Directors (including any committee thereof) or its Representatives shall be deemed to be a breach of this Section 5.03 by the Company.

(b) Notwithstanding the restrictions set forth in Section 5.03(a), at any time prior to obtaining the Company Stockholder Approval, if after the date hereof the Company receives an unsolicited Company Competing Proposal that the Board of Directors of the Company determines in good faith (after consultation with its financial advisors and outside legal counsel) constitutes, or would reasonably be expected to result in, a Superior Proposal, the Board of Directors of the Company determines in good faith (after consultation with its outside legal counsel) that the failure to take the actions described in clauses (i) and (ii) below would be inconsistent with the Board of Directors' fiduciary duties under Delaware Law, and such Company Competing Proposal has not resulted from the Company breaching its obligations under this Section 5.03, the Company may (i) furnish nonpublic information to the person making such Company Competing Proposal, if, and only if, prior to so furnishing such information, the Company receives from such person an executed confidentiality agreement on terms no more favorable to such person than those contained in the Confidentiality Agreement and (ii) participate in discussions or negotiations with such person (and its Representatives) making such Company Competing Proposal with respect to such Company Competing Proposal; provided that the Company shall give written notice to Parent after any such determination by the Company's Board of Directors and before taking any of the actions described in the foregoing clauses (i) and (ii). The Company shall promptly notify Parent (within no more than 48 hours) of the communication or receipt of any Company Competing Proposal, any request for information that could reasonably be expected to be related to a Company Competing Proposal, or any request for discussions or negotiations that could reasonably be expected to be related to a Company Competing Proposal, indicating, in connection with such notice, the identity of the person making such Company Competing Proposal or request and the material terms and conditions thereof.

The Company shall keep Parent reasonably informed on a current basis (within no more than 48 hours) of any material developments in the status and terms of any such Company Competing Proposal or request (including whether such Company Competing Proposal or request has been withdrawn or rejected and any material change to the terms thereof) and shall concurrently provide Parent with copies of any material written information or materials that it provides to the person making the request therefor that have not been previously provided to Parent.

(c) From and after the date of this Agreement until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.01 and except as otherwise provided for in the immediately following sentence and Section 5.03(d), neither the Board of Directors of the Company nor any committee thereof shall (i) withdraw, qualify or modify or publicly propose to withdraw, qualify or modify, in any manner, the Company Recommendation (a "Company Change of Recommendation"); (ii) approve or recommend or propose publicly to approve or recommend, any Company Competing Proposal; or (iii) approve or recommend, or publicly propose to approve or recommend, or execute or enter into any letter of intent, agreement in principle, acquisition or other agreement relating to any Company Competing Proposal (other than a confidentiality agreement permitted by Section 5.03(b)). Notwithstanding anything herein to the contrary, at any time prior to obtaining the Company Stockholder Approval and other than in connection with a Company Competing Proposal (which is addressed in Section 5.03(d)), the Board of Directors of the Company may make a Company Change of Recommendation if the Board of Directors of the Company has determined in good faith after consultation with the Company's financial and outside legal advisors that the failure of the Board of Directors of the Company to withdraw, qualify or modify the Company Recommendation would be inconsistent with the directors' exercise of their fiduciary duties to the Company's stockholders under applicable Law; provided, that the Company has provided Parent two Business Days' prior written notice advising Parent that it intends to take such action and specifying, in reasonable detail, the reasons for such action.

(d) Notwithstanding anything herein to the contrary, if prior to the receipt of the Company Stockholder Approval, the Board of Directors of the Company has determined in good faith, after consultation with the Company's financial advisors and outside legal counsel, that an unsolicited Company Competing Proposal made after the date hereof that has not resulted from a breach of the Company's obligations under this Section 5.03 constitutes a Superior Proposal, then the Board of Directors of the Company shall provide written notice to Parent at least two business days in advance of making or effecting a Company Change of Recommendation (a "Notice of Superior Proposal"). A Notice of Superior Proposal shall advise Parent that the Board of Directors of the Company has received a Superior Proposal and shall include any information and materials required to be delivered under Section 5.03(b) that have not yet been provided to Parent (including the most recent version of any written agreement relating to the

transaction that constitutes a Superior Proposal or, if no such agreement exists, a written summary of the material terms and conditions of such Superior Proposal). If Parent, within two business days following its receipt of a Notice of Superior Proposal (the "Notice Period"), makes an offer that, as determined in good faith by the Company's Board of Directors, after consultation with its financial advisors and outside legal counsel, results in the applicable Company Competing Proposal no longer being a Superior Proposal, then the Company shall not make a Company Change of Recommendation with respect to such Company Competing Proposal and shall have no right to terminate this Agreement pursuant to Section 8.01(f) as a result of such Company Competing Proposal. If Parent shall not have made such an offer within the Notice Period, then the Board of Directors of the Company may make a Company Change of Recommendation with respect to the Superior Proposal to which such Notice Period applied and/or may terminate this Agreement to accept such Superior Proposal pursuant to Section 8.01(f) after paying the Company Termination Fee in accordance with Section 8.02. During the Notice Period, the Company shall, and shall cause its Representatives, including, without limitation, its financial advisors and outside legal counsel, to negotiate in good faith with Parent and its Representatives (to the extent Parent desires to negotiate) with respect to any offer from Parent. Any (i) material revisions to the terms of a Superior Proposal or (ii) material revisions to a Company Competing Proposal that the Company's Board of Directors had determined no longer constitutes a Superior Proposal, shall constitute a new Company Competing Proposal and shall require the Company to deliver to Parent a new Notice of Superior Proposal and a new Notice Period shall commence thereafter. Except in accordance with the procedures set forth in this Section 5.03(d), the Company shall have no right to terminate this Agreement pursuant to Section 8.01(f).

(e) Nothing contained in this Agreement shall prohibit the Company or the Board of Directors of the Company from (i) taking and disclosing to the Company's stockholders a position contemplated by Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act, to the extent applicable to a Company Competing Proposal, or (ii) making any disclosure to its stockholders if the Board of Directors of the Company has determined in good faith, after consultation with outside legal counsel, that the failure to do so would be inconsistent with any applicable Law; provided, that the Board of Directors of the Company may not effect a Company Change of Recommendation, unless permitted to do so by Section 5.03(c) and Section 5.03(d); provided, further, that notwithstanding anything herein to the contrary, any disclosure (other than a "stop-look-and-listen" communication to its stockholders pursuant to Rule 14d-9(f) promulgated under the Exchange Act) made pursuant to Rule 14d-9 or 14e-2(a) shall be deemed to be a Company Change of Recommendation, unless the Company's Board of Directors expressly reaffirms its recommendation to the Company's stockholders in favor of approval of the Merger and this Agreement. The Company shall not submit to the vote of its stockholders any Company Competing Proposal or Superior Proposal prior to the termination of this Agreement.

(f) As used in this Agreement, "Company Competing Proposal" shall mean any inquiry, offer or proposal (from any person other than Parent or its Subsidiaries) for (i) a merger, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute more than 15% of the assets of the Company and its Subsidiaries, taken as a whole; (ii) the direct or indirect acquisition of assets or businesses representing 15% or more of the assets of the Company and its Subsidiaries, taken as a whole, whether pursuant to an acquisition of securities, assets or otherwise; or (iii) the acquisition of 15% or more of any class of the issued and outstanding equity or voting securities of the Company.

(g) As used in this Agreement, "Superior Proposal" shall mean a bona fide written Company Competing Proposal (provided, that for purposes of the definition of Superior Proposal, references to "15%" shall be deemed to be references to "50%"), which the Board of Directors of the Company determines in good faith, after consultation with the Company's financial advisors and outside legal counsel, taking into account all the terms of the Company Competing Proposal (including, without limitation, the legal, financial and regulatory aspects of such proposal, the identity of the person making such proposal and the conditions for completion of such proposal) (i) is more favorable, from a financial point of view, to the Company's stockholders than the transactions contemplated by this Agreement (taking into account any revised proposal by Parent to amend the terms of this Agreement pursuant to and in accordance with Section 5.03(d)) and the failure of the Board of Directors of the Company to approve or recommend such Company Competing Proposal would be inconsistent with its fiduciary duties under applicable Law, (ii) the financing of which is fully committed or reasonably likely to be obtained and (iii) is reasonably expected to be consummated on a timely basis.

ARTICLE VI

ADDITIONAL AGREEMENTS

SECTION 6.01 Preparation of the Form S-4 and the Proxy Statement; Stockholder Meetings.

(a) As soon as practicable following the date of this Agreement, and in any event within 30 days after the date hereof, Parent and the Company shall prepare and file with the SEC the Proxy Statement and the Form S-4, in which the Proxy Statement will be included as a proxy statement/prospectus. Each of the Company and Parent will cooperate with each other and respond promptly to any comments from the SEC or the staff of the SEC on the Proxy Statement or the Form S-4. Parent and the Company shall each use its reasonable best efforts to have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing and keep the Form S-4 effective for so long as necessary to consummate the Merger. The Company shall use its

reasonable best efforts to cause the Proxy Statement to be mailed to its stockholders as promptly as practicable after the Form S-4 is declared effective under the Securities Act. Parent shall also take any action required to be taken under any applicable state securities Laws in connection with the issuance of shares of Parent Common Stock in the Merger, and the Company shall furnish all information concerning the Company and the holders of shares of Company Common Stock as may be reasonably requested by Parent in connection with any such action. No filing of, or amendment or supplement to, the Form S-4 will be made by Parent, and no filing of, or amendment or supplement to the Proxy Statement will made by the Company, without providing the other party and its counsel a reasonable opportunity to review and comment thereon and giving due consideration to such comments. If at any time prior to the Effective Time any information relating to the Company or Parent, or any of their respective Affiliates, directors or officers, should be discovered by the Company or Parent which should be set forth in an amendment or supplement to either the Form S-4 or the Proxy Statement, so that either such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by Law, disseminated to the stockholders of the Company. The parties shall notify each other promptly of the receipt of any comments from the SEC or the staff of the SEC and of any request by the SEC or the staff of the SEC for amendments or supplements to the Proxy Statement or the Form S-4 or for additional information and shall supply each other with copies of (i) all correspondence between it or any of its Representatives, on the one hand, and the SEC or the staff of the SEC, on the other hand, with respect to the Proxy Statement, the Form S-4 or the Merger and (ii) all orders of the SEC relating to the Form S-4.

(b) The Company shall, as soon as reasonably practicable following the date of this Agreement, take all actions necessary to duly call, give notice of, convene and hold a meeting of its stockholders (the "Company Stockholders Meeting"), in accordance with applicable Laws, the Company Certificate and the Company Bylaws. In connection with the Company Stockholders Meeting, the Company shall (i) unless there has been a Company Change of Recommendation in accordance with Section 5.03(c) and Section 5.03(d), use its reasonable best efforts to obtain the Company Stockholder Approval and (ii) otherwise comply with all legal requirements applicable to such meeting. The Company shall include in the Proxy Statement the Company Recommendation, unless there has been a Company Change of Recommendation in accordance with Section 5.03(c) and Section 5.03(d). Without limiting the generality of the foregoing, unless this Agreement has been terminated pursuant to Section 8.01, the Company shall submit the Merger and this Agreement for the approval of its stockholders at the Company Stockholder Meeting whether or not a Company Change of Recommendation shall have occurred or a Company Competing Proposal shall have been

publicly announced or otherwise made known to the Company, its Board of Directors, its Representatives or its stockholders.

SECTION 6.02 Access to Information; Confidentiality.

(a) Subject to applicable Laws, the Company shall afford to Parent and its Representatives reasonable access during normal business hours during the period from the date hereof until the earlier to occur of the Effective Time and the date, if any, on which this Agreement is terminated pursuant to Section 8.01 to all of its and its Subsidiaries' properties, books, contracts, commitments, personnel and records and, during such period, the Company shall furnish to Parent promptly all other information concerning its business, properties and personnel as the other party may reasonably request. Subject to applicable Laws, Parent shall afford to the Company and its Representatives reasonable access to its executive officers during normal business hours during the period from the date hereof until the earlier to occur of the Effective Time and the date, if any, on which this Agreement is terminated pursuant to Section 8.01. Each party shall hold, and shall cause its Representatives to hold, all information received from the other party, directly or indirectly, in confidence in accordance with the confidentiality agreement, dated as of December 10, 2009, between Parent and the Company (as it may be amended from time to time, the "Confidentiality Agreement"). Notwithstanding the foregoing, neither party shall be obligated to provide any such access or information to the extent that doing so (x) may cause a waiver of an attorney-client privilege or loss of attorney work product protection, (y) would violate a confidentiality obligation to any Person or (z) would violate any Law applicable to it, its Subsidiaries or its business. The disclosing party shall be entitled to have its Representatives present at all times during any inspection pursuant to this Section 6.02. No access or information provided pursuant to this Section 6.02 will affect any of the representations or warranties of the parties contained in this Agreement.

(b) Notwithstanding anything in this Section 6.02 to the contrary, no party nor any of its Representatives shall (i) contact or have any discussions with any of the other party's employees below the level of Executive Vice President (or, if no such position exists with respect to any particular area of such other party's organization, its equivalent), unless in each case an employee of such other party at or above the level of Executive Vice President has (A) made such employee available or (B) given written consent to discuss with such employee (such consent not to be unreasonably withheld, conditioned or delayed); (ii) contact or have any discussions with any of the vendors, licensees, franchisees, landlords or sublandlords (including any airport authority) or tenants or subtenants of any party or its Subsidiaries, without prior written consent of the relevant party, not to be unreasonably withheld, conditioned or delayed, (iii) damage any property or any portion thereof or (iv) perform any onsite procedure or investigation (including any onsite environmental investigation or study) that involves physical disturbance or damage to any property or any portions thereof.

SECTION 6.03 Reasonable Best Efforts; HSR Filings; Other Actions.

(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. 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; (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; (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; (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 (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. 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. 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, (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, (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, (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 and (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. 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. The Board of Directors of the Company shall (a) take all action reasonably necessary to ensure that no Takeover Law is or becomes applicable to this Agreement, the Merger or any of the other transactions contemplated by this Agreement and (b) if any Takeover Law becomes applicable to this Agreement, the Merger or any of the other transactions contemplated by this Agreement, take all action reasonably necessary to ensure that the Merger and the other transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such statute or regulation on this Agreement, the Merger and the other transactions contemplated by this Agreement.

(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. 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.

(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"). 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. 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.

(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.

(e) Each of Parent and the Company shall use its reasonable best efforts to take, or cause to be taken, all reasonable actions and to do, or cause to be done, all things reasonably necessary, proper or advisable to obtain the consents listed on Section 6.03(e) of the Company Disclosure Schedule, and each of Parent and the Company shall use its reasonable best efforts to cooperate with each other in such efforts.

SECTION 6.04 Directors' and Officers' Indemnification and Insurance.

(a) Parent and Merger Sub agree that all rights to exculpation and indemnification for acts or omissions occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time (including any matters arising in connection with the transactions contemplated by this Agreement), now existing in favor of the current or former directors, officers or employees, as the case may be, of the Company or its Subsidiaries (the "Indemnified Parties") as provided in the Company Certificate, the Company Bylaws (or equivalent organizational documents of the Company or any of its Subsidiaries or Affiliates) or in any agreement (a "Company Indemnity Agreement"), each as in effect on the date of this Agreement shall survive the Merger and shall continue in full force and effect in accordance with their terms. The Company has made available to Parent true and complete copies of all Company Indemnity Agreements. Parent and the Surviving Entity shall (and Parent shall cause the Surviving Entity to) indemnify, defend and hold harmless, and advance expenses to Indemnified Parties with respect to all acts or omissions by them in their capacities as such at any time prior to the Effective Time, to the fullest extent provided by: (i) the Company Certificate, the Company Bylaws (or equivalent organizational documents of the Company or any of its Subsidiaries or affiliates) as in effect on the date of this Agreement; and (ii) any Company Indemnity Agreement between any such Indemnified Party on the one hand and the Company or any of its Subsidiaries on the other hand.

(b) Without limiting the provisions of Section 6.04(a), from and after the Effective Time, Parent will: (i) indemnify, defend and hold harmless to the fullest extent permitted by applicable Law, each Indemnified Party from and against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages, penalties liabilities and amounts paid in settlement (including, in each case, any interest or assessments thereon) in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, to the extent such claim, action, suit, proceeding or investigation arises out of or pertains to: (A) any action or omission or alleged action or omission in such Indemnified Party's capacity as a director, officer or employee of the Company or any of its Subsidiaries prior to the

Effective Time; or (B) the Merger, this Agreement and any transactions contemplated hereby; and (ii) pay (within 30 days following any request for advancement) the expenses (including reasonable attorneys' fees) of any Indemnified Party incurred in connection with any such claim, action, suit, proceeding or investigation upon receipt of an undertaking by or on behalf of such Indemnified Party to repay such amount if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified, in each case, if such Indemnified Party is entitled to indemnification or advancement of expenses as of the date of this Agreement pursuant to the Company's or any of its Subsidiary's certificate of incorporation, bylaws or other similar governing documents or any applicable Company Indemnity Agreement. Notwithstanding the foregoing, the Indemnified Parties as a group may retain only one law firm to represent them with respect to each such matter unless there is, under applicable standards of professional conduct, a conflict on any significant issue between the positions of any two or more Indemnified Parties.

(c) Parent will provide, or cause the Surviving Entity to provide, for a period of not less than six years after the Effective Time, the Indemnified Parties who are insured under the Company's directors' and officers' insurance and indemnification policy with an insurance and indemnification policy that provides coverage for events occurring at or prior to the Effective Time (the "D&O Insurance") that is no less favorable than the existing policy of the Company; provided, that Parent and the Surviving Entity shall not be required to pay an annual premium for the D&O Insurance in excess of 300% of the annual premium paid as of the date hereof by the Company for such insurance; provided, further, that if the annual premiums of such insurance coverage at any time exceed such amount, Parent or the Surviving Entity shall be obligated to obtain a policy with the greatest coverage available for a cost not exceeding such amount. Notwithstanding anything to the contrary in this Agreement, the Company may and at Parent's request shall, prior to the Effective Time, purchase a "tail" directors' and officers' insurance and indemnification policy, provided that payment for each year of insurance coverage provided by such "tail" directors' and officers' insurance policy shall not exceed 300% of the annual premium paid as of the date hereof by the Company. Any such "tail" directors' and officers' insurance and indemnification policy will satisfy Parent's obligation under this Section 6.04(c) to provide D&O Insurance.

(d) The Indemnified Parties to whom this Section 6.04 applies shall be third party beneficiaries of this Section 6.04. The provisions of this Section 6.04 are intended to be for the benefit of each Indemnified Party and his or her successors, heirs and representatives.

(e) Notwithstanding anything herein to the contrary, this Section 6.04 shall survive the consummation of the Merger indefinitely and shall be binding, jointly and severally, on all successors and assigns of Parent, the Surviving Entity and its Subsidiaries, and shall be enforceable by the Indemnified Parties and their successors,

heirs or representatives. In the event that Parent, the Surviving Entity or any of their respective successors or assigns consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or transfers or conveys all or a majority of its properties and assets to any person, then, and in each such case, proper provision shall be made so that such other person or the successors and assigns of Parent or the Surviving Entity as the case may be shall succeed to its obligations set forth in this Section 6.04.

SECTION 6.05 Fees and Expenses. Except as otherwise provided in this Agreement, all fees and expenses incurred in connection with this Agreement, the Merger and the other transactions contemplated by this Agreement shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated.

SECTION 6.06 Public Announcements. Parent and the Company shall consult with each other before issuing, and give each other the opportunity to review and comment upon, any press release or other public statements with respect to the transactions contemplated by this Agreement, including the Merger, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange, it being understood that the final form and content of any such release or announcement shall be at the final discretion of the disclosing party. The parties agree that the initial press release to be issued with respect to the transactions contemplated by this Agreement shall be in the form heretofore agreed to by the parties.

SECTION 6.07 Stock Exchange Listing. Parent shall cause the shares of Parent Common Stock to be issued in the Merger to be approved for listing on the NYSE, subject to official notice of issuance, prior to the Closing Date.

SECTION 6.08 Stockholder Litigation. Each party shall promptly notify the other party of any stockholder litigation against it and/or its directors relating to this Agreement, the Merger and/or the transactions contemplated by this Agreement and shall keep the other party reasonably informed regarding any such stockholder litigation. Each party shall give the other party the opportunity to consult with it regarding the defense or settlement of any such stockholder litigation and shall give due consideration to the other party's advice with respect to such stockholder litigation. The Company shall not settle any such litigation without the prior consent of Parent (which consent shall not be unreasonably withheld or delayed).

SECTION 6.09 Employee Matters.

(a) For the one-year period following the Effective Time, Parent shall, or shall cause the Surviving Entity to, (i) provide to each individual actively employed by the Company or one of its Subsidiaries as of the Effective Time who continues as an

employee of the Surviving Entity (excluding any employee covered under the terms of a collective bargaining agreement) (collectively, the "Covered Employees") with at least the same level of base salary or base wages and on substantially the same terms and conditions as provided to such Covered Employee immediately prior to the Effective Time and (ii) except as set forth on Section 6.09(a) of the Parent Disclosure Schedule, provide each Covered Employee with employee benefits (including severance) and annual bonus opportunities that in the aggregate are substantially similar to the employee benefits (including severance but excluding any equity-based plans or change in control severance, retention or other benefits with respect to a transaction occurring after the Closing Date (it being understood that nothing in this Section 6.09(a) is intended to address or affect whether any such change in control severance, retention or other benefits may be payable pursuant to any existing commitment or obligation that continues in effect after the Closing)) and annual target bonus opportunities provided to such Covered Employee under the Company Benefit Plans as in effect immediately prior to the Effective Time. Notwithstanding the foregoing, nothing contained in this Agreement shall (i) prevent the amendment or termination of any Company Benefit Plan in accordance with its terms, or interfere with the right or obligation of Parent or the Surviving Entity to make such changes as are necessary to conform with applicable Law or (ii) limit the right of Parent or the Surviving Entity to terminate the employment of any employee at any time.

(b) For purposes of determining eligibility to participate, and to the extent that a Covered Employee becomes eligible to participate or commences to participate in an employee benefit plan maintained by Parent or the Surviving Entity, Parent shall cause such employee benefit plan to (i) recognize the service of such Covered Employee with the Company or its Subsidiaries for purposes of eligibility, vesting, level of benefits and benefit accrual (other than benefit accrual under a defined benefit pension plan) under such employee benefit plan to the same extent such service was recognized immediately prior to the Effective Time under a comparable Company Benefit Plan in which such Covered Employee was a participant immediately prior to the Effective Time or, if there is no such comparable benefit plan, to the same extent such service was recognized under the Company 401(k) plan immediately prior to the Effective Time, provided that (A) recognition of such service shall not be required to the extent that the service of employees other than Covered Employees is not so recognized under such employee benefit plans and (B) such recognition of service shall not operate to duplicate any benefits payable to the Covered Employee with respect to the same period of service, and (ii) with respect to any health, dental or vision plan of Parent or any of its Subsidiaries (other than Company and its Subsidiaries) in which any Covered Employee commences to participate, in the plan year that includes the year in which such Covered Employee commences to participate, (x) cause any pre-existing condition limitations under such Parent or Subsidiary plan to be waived with respect to such Covered Employee to the extent such limitation would have been waived or satisfied under the Company Benefit Plan in which such Covered Employee participated

immediately prior to such commencement of participation, and (y) recognize any medical or other health expenses incurred by such Covered Employee in the year that includes the year in which such Covered Employee commences to participate for purposes of any applicable deductible and annual out-of-pocket expense requirements under any such health, dental or vision plan of Parent or any of its Subsidiaries (including the Surviving Entity).

(c) From and after the Effective Time, Parent shall, or shall cause the Surviving Entity to, honor, in accordance with the terms thereof as in effect as of the date hereof each employment agreement and change in control agreement listed on Section 6.09(c) of the Company Disclosure Schedule.

(d) This Section 6.09 shall be binding upon and inure solely to the benefit of the parties to this Agreement, and nothing in this Article VI, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Section 6.09.

SECTION 6.10 Notification of Certain Matters. Each party shall give prompt notice to the other party of the occurrence or nonoccurrence of any change, effect, event, change in circumstance, occurrence or the discovery of any fact, that would reasonably be expected to cause any of the conditions to Closing set forth in Article VII not to be satisfied; provided, that the delivery of any notice pursuant to this Section 6.10 shall not limit or otherwise affect the remedies available hereunder.

SECTION 6.11 Parent Board of Directors. Prior to the Effective Time, Parent shall take such actions as may be required to appoint, and shall appoint, effective as of the Effective Time, Thomas P. Capo (or, if he is unwilling or unable to serve as a member of Parent's Board of Directors for any reason, such other member of the Company's Board of Directors as the Company and Parent may agree) to the Parent Board of Directors to hold office in accordance with the Parent Certificate and the Parent Bylaws, and, to the extent so required, shall increase the size of the Parent Board of Directors to permit the appointment of such person.

SECTION 6.12 Cooperation Regarding Certain Indebtedness.

(a) The Company shall use its reasonable best efforts to assist and cooperate with Parent in doing all things as may be reasonably requested by Parent to procure that as of, and subject to the occurrence of, the Effective Time arrangements reasonably satisfactory to Parent have been made for, at Parent's option and at Parent's sole cost and expense, (i) without limiting Section 6.13, the valid and effective continuation of, or replacement of, any letters of credit or surety bonds issued and outstanding for the account of, or in support of or in connection with obligations of the Company or any of its Subsidiaries (including any letters of credit (including enhancement letters of credit with respect to the Medium Term Notes) issued under the

Company Credit Agreement), including, but not limited to, assisting Parent or any of its Subsidiaries, in connection with the arrangement of a new letter of credit facility or the increase of letter of credit availability under any existing facilities of Parent and/or its Subsidiaries if and to the extent deemed necessary or advisable by Parent, (ii) the use by Parent or its Subsidiaries (whether by sublease or otherwise, and as and when needed by Parent and its Subsidiaries in the ordinary course operation of their vehicle rental business) of vehicles owned by the Company or its Subsidiaries, including, but not limited to obtaining, prior to Closing any necessary amendments or waivers to the Medium Term Notes (and the Related Documents (as defined in the Base Indenture) with respect to each of the Medium Term Notes) or the Canadian Fleet Securitization Program to permit such use, (iii) subject to compliance with the enhancement requirements set forth with respect to the Medium Term Notes, the purchase from and after the Closing on behalf of, and for delivery to, Hertz General Interest LLC of "replacement vehicles" by VEXCO, LLC, as a qualified intermediary, pursuant to the like kind exchange program maintained by the Company in accordance with Section 1031 of the Code and evidenced by that certain master exchange agreement to which, among others, VEXCO, LLC and Rental Car Finance Corp. are a party (together with any and all documents and agreements ancillary thereto, the "VEXCO MEA"), using the "relinquished property proceeds" derived from vehicles owned by Rental Car Finance Corp. that have been relinquished to, and sold by, VEXCO, LLC, including, but not limited to, obtaining, prior to the Closing, at Parent's sole expense, any necessary amendments or waivers to the VEXCO MEA and the Medium Term Notes (and the Related Documents (as defined in the Base Indenture) with respect to each of the Medium Term Notes), and (iv) upon Parent's written request, the conversion of Thrifty, Inc., Thrifty Rent-A-Car Systems, Inc. and Rental Car Finance Corp. into Delaware or Oklahoma limited liability companies prior to the Closing Date, and the conversion of the Company into a Delaware limited liability company immediately after the Closing, including, but not limited to, obtaining any necessary amendments or waivers to the Medium Term Notes (and the Related Documents (as defined in the Base Indenture) with respect to each of the Medium Term Notes). With respect to any corporation that the Company converts to an LLC prior to Closing at the written request of Parent pursuant to this Section 6.12(a), the Company shall be entitled to elect the "initial classification" of such limited liability company, pursuant to section 301.7701-3 of the Treasury Regulations, to be an association taxable as a corporation retroactive to the date of conversion if the Closing shall not have occurred prior to the seventieth day following the date of such conversion.

(b) Upon request by the Company, Parent shall promptly, and in any event within ten Business Days following such request, reimburse the Company and its Subsidiaries for any reasonable out-of-pocket costs incurred by them in connection with this Section 6.12.

(c) Parent hereby agrees and acknowledges that its obligation to effect the Merger on the Closing Date in accordance with this Agreement is not conditioned or

contingent upon (i) obtaining or closing upon any letter of credit, surety bonds or letter of credit facility, (ii) the ability of Parent or its Subsidiaries (other than the Company and its Subsidiaries) to use any vehicles owned by the Company or its Subsidiaries, (iii) the purchase or delivery of any "replacement vehicles" or the relinquishment of any "relinquished property proceeds," (iv) obtaining any amendment or waiver to the Medium Term Notes (and the Related Documents with respect to each of the Medium Term Notes) or the Canadian Fleet Securitization Program or (v) effecting conversions of any of the Company's Subsidiaries to Delaware limited liability companies or facilitating the use by Parent and its Subsidiaries of vehicles owned by the Company or its Subsidiaries.

SECTION 6.13 Termination of Certain Indebtedness. The Company shall use its reasonable best efforts to deliver to Parent, (A) at least four Business Days prior to the anticipated Closing Date, executed prepayment notices and (B) at least two business days prior to the Closing Date, the final form of payoff letters to be executed by third-party lenders or an agent, if applicable, on their behalf, in form and substance reasonably satisfactory to Parent, with respect to all indebtedness of the Company and its Subsidiaries under the Company Credit Agreement, provided that the Company shall not be required to deliver any prepayment notice or payoff letter unless the requisite lenders under the Company Credit Agreement acknowledge and agree that such prepayment or payoff is not irrevocable and that prepayment of the Company Credit Agreement shall not be required unless and until the Closing occurs. Parent and the Company shall use reasonable best efforts to procure that such payoff letters shall (i) provide for a mutually reasonably satisfactory arrangement (which arrangement may include replacement or backstop letters of credit issued under Parent's credit facility) with respect to, any letters of credit issued for the Company or any of its Subsidiaries (including any letters of credit issued under the Company Credit Agreement) and (ii) correctly specify the amounts, including any applicable premiums, fees and expenses, necessary to repay such indebtedness and completely discharge the obligations of the Company and its Subsidiaries with respect to such indebtedness and release any Encumbrances on the assets and properties of the Company and its Subsidiaries relating to such indebtedness. If the Closing occurs (1) on or prior to January 31, 2011 the Company shall, or (2) after January 31, 2011 the Company shall use its reasonable best efforts to, discharge such indebtedness at the Closing and implement such mutually satisfactory arrangement (which arrangement may include replacement or backstop letters of credit issued under Parent's credit facility) with respect to, any letters of credit in accordance with instructions as may be provided in such payoff letters and, unless otherwise requested by Parent, permanently terminate the Company Credit Agreement and all related agreements.

SECTION 6.14 Special Dividend. The Company shall declare and pay a special dividend in an amount per share of Company Common Stock equal to the Special Dividend Per Share Amount (the "Special Dividend"), which dividend shall be

paid immediately prior to the Effective Time to holders of record of issued and outstanding shares of Company Common Stock immediately prior to the Effective Time (other than Dissenting Shares and shares to be canceled in accordance with Section 2.01(a)(ii)). For purposes of U.S. tax withholding, the Company shall treat the Special Dividend paid with respect to Company Common Stock as a distribution under Section 301 of the Code. The "Special Dividend Per Share Amount" shall be an amount equal to $200,000,000 divided by the sum of (i) the number of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than shares to be canceled in accordance with Section 2.01(a)(ii)), (ii) the number of shares of Company Common Stock that would be delivered to the holders of Performance Share Awards outstanding as of immediately prior to the Effective Time if performance was achieved at the target level and (iii) the number of shares of Company Common Stock to which the Company Restricted Stock Units outstanding as of immediately prior to the Effective Time pertain.

SECTION 6.15 Cooperation Regarding Information Technology.

(a) The Company agrees that it shall, and shall cause its Subsidiaries to, use its and their reasonable best efforts to cooperate with Parent to prepare the information technology systems of the Company and its Subsidiaries to permit the efficient sharing of the respective fleets of Parent, the Company and their respective Subsidiaries, with the aim of completing that work as promptly as practicable after the Effective Time. Such cooperation shall include making employees of the Company and its Subsidiaries reasonably available for meetings and consultations at Parent's request, providing reasonable access to relevant information concerning the Company's and its Subsidiaries' information technology systems, engaging in a joint planning process and designing and implementing hardware and software solutions; provided, that such cooperation shall not interfere in any material respect with the ordinary course operation of the Company's or its Subsidiaries' business (including the ability to comply with financing documents and related agreements). Parent shall reimburse the Company for any amounts payable for Electronic Data Systems Corporation and EDS Information Services L.L.C. and for any other reasonable out-of-pocket expenses it may incur as a result of its compliance with this Section 6.15.

(b) Parent hereby acknowledges and agrees that its obligation to effect the Merger on the Closing Date is not contingent upon the ability of the information technology systems of either party to permit the efficient sharing of the respective fleets of Parent, the Company or their respective Subsidiaries at or after the Effective Time or on having completed any work in furtherance of such objective.

ARTICLE VII

CONDITIONS PRECEDENT

SECTION 7.01 Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver by such party at or prior to the Closing of the following conditions:

(a) Stockholder Approval. The Company Stockholder Approval shall have been obtained in accordance with applicable Law.

(b) NYSE Listing. The shares of Parent Common Stock to be issued to the holders of Company Common Stock pursuant to this Agreement shall have been approved for listing on the NYSE, subject to official notice of issuance.

(c) Form S-4. The Form S-4 shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Form S-4 shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC.

(d) 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.

(e) Special Dividend. The Company shall have declared and paid the Special Dividend payable on all shares of Company Common Stock entitled to the Merger Consideration, provided, that the Company shall not be relieved of its obligation to effect the Merger and the other transactions contemplated hereby if it has willfully and materially breached its obligation to declare and pay the Special Dividend pursuant to Section 6.14.

(f) 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.

SECTION 7.02 Conditions to Obligations of Parent and Merger Sub. The obligation of Parent and Merger Sub to effect the Merger is further subject to the satisfaction or waiver by such party at or prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company set forth in the first sentence of Section 3.01 and in Section 3.03, Section 3.06(a) and Section 3.23 of this Agreement shall be true and correct in all respects and the representations and warranties of the Company set forth in Section 3.02 and Section 3.24 of this Agreement shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Effective Time as though made at and as of the Effective Time (except that representations and warranties that by their terms speak as of a specific date or time need only be true and correct as of such date or time). The other representations and warranties of the Company set forth in this Agreement shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time as though made at and as of the Effective Time (except that representations and warranties that by their terms speak as of a specific date or time need only be true and correct as of such date or time), except where the failure of such representations and warranties to be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" or similar qualifier set forth therein) has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company. Parent shall have received a certificate signed on behalf of the Company by the chief executive officer or chief financial officer of the Company to the foregoing effect.

(b) Performance of Obligations of the Company. The Company shall have performed in all respects the obligations set forth in the last sentence of Section 6.13, and shall have performed in all material respects all other obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall have received a certificate signed on behalf of the Company by the chief executive officer or the chief financial officer of the Company to such effect.

(c) No Material Adverse Effect. No change, effect, event, circumstance, occurrence, state of facts or development shall exist or have occurred or come to exist or been threatened since the date hereof that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company. Parent shall have received a certificate signed on behalf of the Company by the chief executive officer or the chief financial officer of the Company to such effect.

(d) 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, (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 (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, 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).

(e) Special Dividend. Parent shall have received a certificate signed on behalf of the Company by the chief executive officer or chief financial officer of the Company to the effect that the Company has declared and paid the Special Dividend payable on all shares of Company Common Stock entitled to receive the Merger Consideration.

(f) Consents and Approvals. The approvals and consents listed on Section 7.02(f) of the Parent Disclosure Schedule shall have been obtained.

SECTION 7.03 Conditions to Obligations of the Company. The obligation of the Company to effect the Merger is further subject to the satisfaction or waiver by the Company at or prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub set forth in the first sentence of Section 4.01 and in Section 4.03, Section 4.06(a), and Section 4.12 of this Agreement shall be true and correct in all respects and the representations and warranties of Parent and Merger Sub set forth in Sections 4.02(a), (b) and (c) and 4.14 of this Agreement shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Effective Time as though made at and as of the Effective Time (except that representations and warranties that by their terms speak as of a specific date or time need only be true and correct as of such date or time). Each of the other representations and warranties of Parent and Merger Sub set forth in this Agreement shall be true and correct in all respects as of the date hereof and as of the Effective Time as though made at and as of the Effective Time (except that representations and warranties that by their terms speak as of a specific date or time need only be true and correct as of such date or time), except

where the failure of any such representations and warranties to be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" or similar qualifier set forth therein) has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent. The Company shall have received a certificate signed on behalf of Parent and Merger Sub by the chief executive officer or the chief financial officer of Parent to the foregoing effect.

(b) Performance of Obligations of Parent and Merger Sub. Parent and Merger Sub shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate signed on behalf of Parent by the chief executive officer or the chief financial officer of Parent to such effect.

(c) No Material Adverse Effect. No change, effect, event, circumstance, occurrence, state of facts or development shall exist or have occurred or come to exist or been threatened since the date hereof that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Parent. The Company shall have received a certificate signed on behalf of Parent by the chief executive officer or the chief financial officer of Parent to such effect.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

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;

(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;

(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; or

(iii) if the Company Stockholder Approval shall not have been obtained at the Company Stockholders Meeting (as such Company Stockholders Meeting may be adjourned or postponed from time to time) duly convened therefor;

(c) by Parent, if there is any breach or inaccuracy of any of the representations or warranties set forth in Article III or if the Company shall have breached or failed to perform any of its covenants or agreements set forth in this Agreement, which breach, inaccuracy or failure to perform (i) would give rise to the failure of a condition set forth in Sections 7.01 or 7.02 and (ii) is incapable of being cured, or is not cured (in each case, to the extent necessary to satisfy the applicable condition set forth in Sections 7.01 or 7.02), by the Company within 30 days following receipt of written notice from Parent of such breach, inaccuracy or failure to perform;

(d) by the Company, if there is any breach or inaccuracy of any of the representations or warranties set forth in Article IV or if Parent or Merger Sub shall have breached or failed to perform any of its covenants or agreements set forth in this Agreement, which breach, inaccuracy or failure to perform (i) would give rise to the failure of a condition set forth in Sections 7.01 or 7.03 and (ii) is incapable of being cured, or is not cured (in each case, to the extent necessary to satisfy the applicable condition set forth in Sections 7.01 or 7.03) by Parent within 30 days following receipt of written notice from the Company of such breach, inaccuracy or failure to perform;

(e) by Parent, at any time prior to the receipt of the Company Stockholder Approval, if (i) the Board of Directors of the Company shall have effected a Company Change of Recommendation or failed to reaffirm the Company Recommendation within ten business days after (x) a Company Competing Proposal shall have been made public (or any person shall have publicly announced a bona fide intention, whether or not conditional, to make a Company Competing Proposal) and (y) the receipt of a written request to do so from Parent or (ii) the Company shall have materially breached its obligations under Section 5.03 or Section 6.01(b); or

(f) by the Company, at any time prior to the receipt of the Company Stockholder Approval, if the Company is simultaneously entering into a definitive agreement to effect a Superior Proposal; provided, that in order for the

termination of this Agreement pursuant to this Section 8.01(f) to be effective, (i) the Company and its Board of Directors shall have complied with the procedures and obligations set forth in Section 5.03(d) with respect to such Superior Proposal and (ii) the Company shall have paid the Company Termination Fee in accordance with Section 8.02.

A party desiring to terminate this Agreement pursuant to clause (b), (c), (d), (e) or (f) of this Section 8.01 shall give written notice of such termination to the other party in accordance with Section 9.02, specifying the provision or provisions hereof pursuant to which such termination is effected.

SECTION 8.02 Termination Fees.

(a) In the event that:

(i) this Agreement is terminated by either Parent or the Company pursuant to Section 8.01(b)(i), (w) the Company Stockholder Approval has not been obtained, (x) after the date of this Agreement and prior to the Company Stockholders Meeting, a Company Competing Proposal shall have been made public (or any person shall have publicly announced a bona fide intention, whether or not conditional, to make a Company Competing Proposal) and such Company Competing Proposal is not withdrawn prior to the date of such termination and (y) within twelve months after the date of such termination, the Company shall have reached a definitive agreement to consummate, shall have consummated, or its Board of Directors shall have recommended to the Company's stockholders, a Company Takeover Transaction, then on the date of such consummation, the execution of such definitive agreement or such recommendation, whichever is earlier, the Company shall pay Parent a fee equal to $44,600,000 (the "Company Termination Fee") by wire transfer of immediately available funds to a bank account designated to the Company by Parent;

(ii) this Agreement is terminated by either Parent or the Company pursuant to Section 8.01(b)(iii), (x) after the date hereof and prior to the Company Stockholders Meeting a Company Competing Proposal shall have been made public (or any person shall have publicly announced a bona fide intention, whether or not conditional, to make a Company Competing Proposal) and such Company Competing Proposal is not withdrawn prior to the taking of the vote at the Company Stockholders Meeting and (y) within twelve months after such termination, the Company shall have reached a definitive agreement to consummate, shall have consummated, or its Board of Directors shall have recommended to the Company's stockholders, a Company Takeover Transaction, then on the date of such consummation, the execution of such definitive agreement or such recommendation, whichever is earlier, the Company shall pay

to Parent the Company Termination Fee, by wire transfer of immediately available funds to a bank account designated to the Company by Parent;

(iii) this Agreement is terminated by Parent pursuant to Section 8.01(e)(i), then the Company shall pay to Parent the Company Termination Fee by wire transfer of immediately available funds to a bank account designated to the Company by Parent, as promptly as reasonably practicable (and, in any event, within three business days after the date of such termination); or

(iv) this Agreement is terminated by the Company pursuant to Section 8.01(f), then on or prior to, and as a condition precedent to the effectiveness of, such termination by the Company, the Company shall pay to Parent the Company Termination Fee by wire transfer of immediately available funds to a bank account designated to the Company by Parent.

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

For purposes of this Section 8.02, a "Company Takeover Transaction" means any transaction of the type referred to in the definition of Company Competing Proposal, except that the references therein to "15%" shall be replaced by "50%".

(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, 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 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.

(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

(e) Each of the Company and Parent acknowledges and agrees that the agreements contained in this Section 8.02 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, neither the Company nor Parent would have entered into this Agreement. If either the Company or Parent fails to pay the Company Termination Fee, the Company's Transaction Expenses, the Parent Termination Fee or Parent's Transaction Expenses, as applicable when due, and, in order to obtain such payment, the other party commences a suit that results in a judgment against the defaulting party for the Company Termination Fee, the Company's Transaction Expenses, the Parent Termination Fee or Parent's Transaction Expenses, as the case may be, the defaulting party shall pay to the other party its reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such suit, together with interest on the amount of the Company Termination Fee, the Company's Transaction Expenses, the Parent Termination Fee or Parent's Transaction Expenses, as the case may be, from the date such payment was required to be made until the date of payment at the prime rate of Citibank N.A. in effect on the date such payment was required to be made.

SECTION 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, other than the provisions of Section 6.05, Section 6.12(b), Section 8.02, this Section 8.03, Article IX, the third sentence of Section 6.02(a) and the last sentence of Section 6.15(a), which provisions shall survive such termination; 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, provided, that, for purposes of Section 6.14 and Section 7.01(e), the failure of the Company to declare or pay the Special Dividend, solely due to its legal or practical inability to do so, shall not constitute a "willful and material breach" of this Agreement as long as such inability does not result from any action or omission of the Company taken,

or not taken, with the purpose of frustrating the satisfaction of the condition set forth in Section 7.01(e).

SECTION 8.04 Amendment. This Agreement may be amended by the parties hereto at any time before or after receipt of the Company Stockholder Approval; provided, however, that after such approval has been obtained, there shall be made no amendment that by Law requires further approval by the stockholders of the Company or Parent without such further approval having been obtained. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

SECTION 8.05 Extension; Waiver. At any time prior to the Effective Time, the parties may (i) extend the time for the performance of any of the obligations or other acts of the other parties, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or (iii) subject to the proviso to the first sentence of Section 8.04, waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01 Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time. This Section 9.01 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time.

SECTION 9.02 Notices. Except for notices that are specifically required by the terms of this Agreement to be delivered orally, all notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally, facsimiled (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

if to Parent or Merger Sub, to:

Hertz Global Holdings, Inc.
225 Brae Boulevard
Park Ridge NJ 07656
Fax: (201) 307-2644

Attention: J. Jeffrey Zimmerman, Esq.

with a copy to:

Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Facsimile No.: (212) 909-6836
Attention: John M. Allen, Esq.
Jonathan E. Levitsky, Esq.

if to the Company, to:

Dollar Thrifty Automotive Group, Inc.
5330 E. 31st Street
P.O. Box 35985
Tulsa, Oklahoma 74135
Facsimile No.: (918) 669-3046
Attention: Vicki J. Vaniman, Esq.

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Facsimile No.: (212) 225-3999
Attention: Paul J. Shim, Esq.
Matthew P. Salerno, Esq.

SECTION 9.03 Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile or electronic transmission), all of which shall be considered one and the same agreement and each of which shall be deemed to be an original.

SECTION 9.04 Entire Agreement; No Third-Party Beneficiaries. This Agreement, including the Company Disclosure Schedule, the Parent Disclosure Schedule, and the Confidentiality Agreement (a) constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement and the Confidentiality Agreement; (b) are not intended to confer upon any person other than the parties any rights, benefits or remedies, other than (i) the rights to indemnification and insurance pursuant to Section 6.04 hereof (of which the persons entitled to indemnification are the intended beneficiaries), (ii) the rights of the Company's stockholders and holders of Company Incentive Awards to pursue claims for damages and other relief, including equitable

relief, for Parent's or Merger Sub's willful and material breach of this Agreement; provided, however, that the rights granted pursuant to this clause (ii) shall only be enforceable by the Company on behalf of such stockholders and holders of Company Incentive Awards in the Company's sole and absolute discretion (and not directly by any such stockholder or holder), it being understood and agreed that any and all interests in such claims shall attach to such shares of Company Common Stock and Company Incentive Awards (and any shares of Company Common Stock issued upon exercise or conversion of such Company Incentive Awards), as applicable, and subsequently trade and transfer therewith and, consequently, any damages, settlements or other amounts recovered or received by the Company with respect to such claims (net of expenses incurred by the Company in connection therewith) may, in the Company's sole and absolute discretion, be (x) distributed, in whole or in part, by the Company to the holders of Company Common Stock and/or holders of Company Incentive Awards as of any date determined by the Company or (y) retained by the Company for the use and benefit of the Company in any manner the Company deems fit; provided, further, however, that under no circumstances shall any such rights of holders of Company Common Stock or Company Incentive Awards be enforceable by such stockholders, holders or by any other person acting for or on their behalf other than the Company; and (iii) after the Effective Time, the rights of the Company's stockholders to receive the Merger Consideration and of the holders of Company Incentive Awards to receive the benefits of Article II hereof.

SECTION 9.05 Governing Law. This Agreement and any dispute arising out of, relating to or in connection with this Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to any choice or conflict of Law provision or rule (whether of the State of Delaware or of any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

SECTION 9.06 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties and any attempt to make any such assignment without such consent shall be null and void, except that Merger Sub may assign any of or all its rights, interests and obligations under this Agreement to any direct, wholly owned Subsidiary of Parent, but no such assignment shall relieve Merger Sub of any of its obligations hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

SECTION 9.07 Enforcement of the Agreement; Consent to Jurisdiction. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce

specifically the terms and provisions of this Agreement in the chancery courts of the State of Delaware or in any federal court located in the State of Delaware, this being in addition to any other remedy to which they are entitled at Law or in equity. In addition, each of Parent, Merger Sub and the Company (a) consents to submit itself to the personal jurisdiction of any such court with respect to any dispute arising out of, relating to, or in connection with this Agreement or the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (c) agrees that it will not bring any action arising out of, relating to or in connection with this Agreement or the transactions contemplated by this Agreement in any court other than the chancery courts of the State of Delaware or in any federal court located in the State of Delaware. The parties irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in the chancery courts of the State of Delaware or in any Federal court located in the State of Delaware, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Each of the Company, Parent and Merger Sub hereby agrees that in addition to any other legally permissible means of service, service of any process, summons, notice or document by U.S. registered mail to the respective addresses set forth in Section 9.02 shall be effective service of process for any proceeding arising out of, relating to or in connection with this Agreement or the transactions contemplated hereby, including the Merger.

SECTION 9.08 WAIVER OF JURY TRIAL. EACH OF PARENT, MERGER SUB AND THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF PARENT OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT THEREOF.

SECTION 9.09 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 9.10 Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) an "Affiliate" of any person means another person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person; and for purposes of this definition, "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), shall mean, with respect to any person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise;

(b) "business day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by applicable Law to close;

(c) "Canadian Fleet Securitization Program" means the TCL Funding LP Amended and Restated Limited Partnership Agreement, dated as of June 21, 2005, as amended from time to time, by and between Dollar Thrifty Automotive Group Canada Inc. and BNY Trust Company of Canada (together with all agreements related thereto);

(d) "CBC Approval" means (i) that the Commissioner shall have issued an advance ruling certificate under section 102 of the Competition Act with respect to the transactions contemplated by this Agreement; or (ii) unless waived by Parent, the Commissioner shall have issued a no-action letter and the applicable waiting period under section 123 of the Competition Act shall have expired, been terminated, or been waived by the Commissioner and any timing agreement entered into by Parent with the Commissioner (with the consent of the Company which will not be unreasonably withheld) to avoid the issuance of a supplemental information request, shall have expired, been terminated, or been waived by Parent;

(e) "Company Benefit Plan" means each written or oral employee pension, profit sharing, bonus, deferred compensation, incentive compensation, stock purchase, stock bonus, restricted stock, stock option or other equity-based arrangement and any employment, termination, retention, change in control, severance, health, welfare, death benefit, retirement, savings or fringe employee benefit plans, agreements, practices or arrangements, including any "employee benefit plans" as defined in Section 3(3) of ERISA, maintained by the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries contributes or is obligated to contribute with respect to its employees or former employees;

(f) "Company Credit Agreement" means the Credit Agreement dated as of June 15, 2007, as amended from time to time subject to Section 5.01, among the Company, as borrower, various financial institutions as may from time to time

become parties thereto, Deutsche Bank Trust Company Americas, as administrative agent, The Bank of Nova Scotia, as syndication agent, and Deutsche Bank Securities Inc. and The Bank of Nova Scotia as joint lead arrangers and joint bookrunners;

(g) "Competition Act" means the Competition Act (Canada), including the regulations thereunder, as each may be amended from time to time;

(h) "HSR Approval" means the expiration or early termination of the applicable waiting periods required pursuant to the HSR Act.

(i) "Indebtedness" of any person means, without duplication: (a) all obligations of such person for borrowed money and all obligations of such person evidenced by a note, bond, debenture or similar instrument; (b) all obligations, contingent or otherwise, relative to the face amount of all letters of credit, bonds (including surety bonds) and similar obligations, whether or not drawn, and banker's acceptances issued for the account of such person; (c) all obligations of such person as lessee under leases which have been or should be, in accordance with GAAP, recorded as capitalized lease liabilities; (d) all obligations of such person in the nature of overdrafts; (e) net liabilities of such person under all hedging obligations; and (f) whether or not so included as liabilities in accordance with GAAP, all obligations of such person to pay the deferred purchase price of property or services (excluding open accounts extended by suppliers on normal trade terms in connection with purchases of goods and services), and indebtedness (excluding prepaid interest thereon) secured by any Encumbrance on any property owned by such person even though such person has not assumed or otherwise become liable for the payment thereof;

(j) "Knowledge" means, the actual knowledge, without inquiry of (i) with respect to the Company, the individuals set forth on Section 9.10(j) of the Company Disclosure Schedule and (ii) with respect to Parent, the individuals set forth on Section 9.10(j) of the Parent Disclosure Schedule.

(k) "Material Adverse Effect" means, with respect to the Company or Parent, as the case may be, any change, effect, event, circumstance, occurrence, state of facts or development that, either individually or in the aggregate, (A) is materially adverse to the business, assets, financial condition or results of operations of such party and its Subsidiaries, taken as a whole, other than any change, effect, event, circumstance, occurrence, state of facts or development to the extent arising out of or resulting from (i) general economic or political conditions or the financial, banking, securities, currency, capital or credit markets in general, including changes in interest rates or exchange rates or the availability of financing, (ii) conditions generally affecting the car rental industry, (iii) changes or proposed changes in GAAP, regulatory accounting principles or

applicable Law or the interpretation thereof, (iv) any outbreak, escalation or worsening of hostilities or war (whether declared or not declared) or act of terrorism or sabotage, (v) earthquakes, hurricanes, tornadoes or other natural disasters, (vi) the announcement or the existence of, or compliance with, this Agreement and the transactions contemplated hereby, (vii) any change in such party's stock price or trading value, (viii) the failure of such party to meet any projections of earnings, revenues or other financial measures (whether prepared by such party or any third party) or (ix) any change or proposed change in the debt ratings of the party or any of its Subsidiaries or any debt securities of such party or any of its Subsidiaries; provided that (1) none of the foregoing clauses (i) through (v) shall exclude any change, effect, event, circumstance, occurrence or state of facts to the extent that it materially disproportionately impacts a party and its Subsidiaries (taken as a whole) relative to other companies in the car rental industry, (2) no change, effect, event, circumstance, occurrence, state of facts or development underlying a change, proposed change or failure under any of the foregoing clauses (vii), (viii) or (ix) shall itself be excluded if it would otherwise constitute a Material Adverse Effect and (3) the foregoing clause (vi) shall not apply to the representations and warranties set forth in Section 3.03, Section 3.04 and Section 3.13(b) in the case of the Company and Section 4.03 and Section 4.04 in the case of Parent and Merger Sub or (B) would prevent or materially impair the ability of such party to consummate the transactions contemplated hereby;

(l) "Medium Term Notes" means any and all notes issued pursuant to the Amended and Restated Base Indenture (the "Base Indenture"), dated as of February 14, 2007, between Rental Car Finance Corp. and Deutsche Bank Trust Company Americas, as supplemented by (i) the Series 2005-1 Supplement, dated as of April 21, 2005, between Rental Car Finance Corp. and Deutsche Bank Trust Company Americas, (ii) the Series 2006-1 Supplement, dated as of March 28, 2006, between Rental Car Finance Corp. and Deutsche Bank Trust Company Americas, (iii) the Series 2007-1 Supplement, dated as of May 23, 2007, between Rental Car Finance Corp. and Deutsche Bank Trust Company Americas, in each case, as amended, supplemented, waived or otherwise modified from time to time, (iv) the Series 2010-1 Supplement, dated as of April 18, 2010, between Retail Car Finance Corp. and Deutsche Bank Trust Company Americas, and (v) where appropriate, each additional financing entered into by Rental Car Financial Corp. and/or Dollar Thrifty Funding Corp. after the date hereof in accordance with Section 5.01(a);

(m) "person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity;

(n) "Subsidiary" means, with respect to any entity, any other entity of which securities or other ownership interest having ordinary voting power to elect a majority of the Board of Directors or other persons performing similar functions, or a majority of the outstanding voting securities, are owned directly or indirectly by such entity; and

(o) "Transaction Expenses" means all reasonable out-of-pocket costs and expenses (including all fees and expenses of financing sources, counsel, accountants, investment bankers, experts and consultants to a party hereto) incurred by or on behalf of a party hereto or its Subsidiaries in connection with or related to due diligence or the authorization, preparation, negotiation, execution, performance or termination of this Agreement, the Merger and the other transactions contemplated hereby.

SECTION 9.11 Interpretation. The words "hereof," "herein," "hereby," "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph and schedule references are to the articles, sections, paragraphs and schedules of this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation." The words describing the singular number shall include the plural and vice versa, words denoting either gender shall include both genders and words denoting natural persons shall include all persons and vice versa. The phrases "the date of this Agreement," "the date hereof," "of even date herewith" and terms of similar import, shall be deemed to refer to the date set forth in the preamble to this Agreement. Any reference in this Agreement to a date or time shall be deemed to be such date or time in New York City, unless otherwise specified. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any person by virtue of the authorship of any provision of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the Company, Parent and Merger Sub have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

HERTZ GLOBAL HOLDINGS, INC.

By: /s/ Mark P. Frissora
Name: Mark P. Frissora
Title: Chief Executive Officer and
Chairman of the Board of Directors

HDTMS, INC.

By: /s/ Mark P. Frissora
Name: Mark P. Frissora
Title: Chief Executive Officer

DOLLAR THRIFTY AUTOMOTIVE GROUP, INC.

By: /s/ Scott L. Thompson
Name: Scott L. Thompson
Title: President and Chief Executive Officer

The Bidding War

FOR IMMEDIATE RELEASE

AVIS BUDGET GROUP SENDS LETTER TO DOLLAR THRIFTY AUTOMOTIVE GROUP REGARDING PROPOSED TRANSACTION WITH HERTZ GLOBAL HOLDINGS

PARSIPPANY, N.J. (May 3, 2010) — Avis Budget Group, Inc. (NYSE: CAR) today sent a letter to the Board of Directors of Dollar Thrifty Automotive Group, Inc. (NYSE: DTG) regarding Dollar Thrifty's proposed transaction with Hertz Global Holdings, Inc. (NYSE: HTZ).

Citigroup is acting as financial advisor to Avis Budget Group and Kirkland & Ellis LLP is acting as legal counsel.

Below is the full text of the letter that Avis Budget sent to Dollar Thrifty's Chairman, Thomas P. Capo, and President and Chief Executive Officer, Scott L. Thompson.

May 3, 2010

Thomas P. Capo, Chairman, and
Scott L. Thompson, President and Chief Executive Officer
Dollar Thrifty Automotive Group, Inc.
5330 East 31st Street
Tulsa, OK 74135

Dear Scott and Tom,

I was very surprised by your April 26 announcement that you had signed a definitive agreement to be acquired by Hertz for approximately $41 per share, of which only about $34 is being funded by Hertz itself. This is particularly true given that, on April 19, a mere week before the Hertz announcement, Scott and I agreed to meet for dinner on April 28 to discuss a transaction between our companies, which you cancelled after the Hertz announcement.

As you know, we at Avis Budget have on several occasions in the past expressed interest in entering into a transaction with Dollar Thrifty, yet at no stage over the last several months did you or your financial advisor engage us in any discussions about a transaction or offer to provide us with information so that we might submit a bid. I spoke with your financial advisor in early April to reiterate our interest in a potential transaction between our companies and to try to arrange a meeting, yet neither they nor you engaged us in any substantive discussions or communicated your interest in Dollar Thrifty being acquired in the near term. It is hard to understand how your failure to engage in discussions with an interested strategic buyer, who you know also would be able to achieve significant synergies

as a result of a combination, can be consistent with the fiduciary duties that you and your board carry to seek the best possible deal for your shareholders.

This failure is all the more surprising given that, at the time you signed a definitive agreement to be acquired at virtually no premium, you clearly had knowledge that published earnings estimates for Dollar Thrifty were well below the updated guidance that you were going to provide as part of your first-quarter earnings announcement after the signing. Given that the Hertz offer is primarily cash, your shareholders, in addition to being offered virtually no premium to a stock price that did not reflect favorable non-public information, would have little opportunity to participate in the substantial upside associated with your improving results, the combination-related synergies or the substantial upside we all see as the industry recovers from its recent lows.

Now that we and our advisors have had access to the terms of the merger agreement, we are astonished that you have compounded these shortcomings by agreeing to aggressive lock-up provisions, such as unlimited recurring matching rights plus an unusually high break-up fee (more than 5.25% of the true transaction value, as described by your own financial advisor), as a deterrent to competing bids that could only serve to increase the value being offered to your shareholders. Given the complete failure to conduct a pre-signing market-check of the virtually no-premium deal with Hertz, such preclusive defensive measures are clearly not supportable in this situation.

We would like to make a substantially higher offer to acquire Dollar Thrifty, especially in light of your recent performance and the potential synergies associated with an acquisition of Dollar Thrifty by Avis Budget. We are confident that the antitrust analysis and clearance timetable for an Avis/Dollar Thrifty transaction are comparable to those associated with a Hertz/Dollar Thrifty transaction. We request access to legal, financial and business due diligence information relating to Dollar Thrifty, including access to management, so that we can formulate and submit such an offer. In that regard, we would be prepared to sign an appropriate non-disclosure agreement. We also request that the egregious provisions of the merger agreement be eliminated so that a level playing field can be created.

We look forward to the opportunity to engage in productive discussions with the board of directors of Dollar Thrifty to allow its shareholders the opportunity they deserve to realize the full value of their investments in Dollar Thrifty.

Sincerely,

/s/ Ronald L. Nelson

Ronald L. Nelson
Chairman and Chief Executive Officer

Avis Budget Group, Inc.

cc: Board of Directors of Dollar Thrifty Automotive Group, Inc.

About Avis Budget Group
Avis Budget Group is a leading provider of vehicle rental services, with operations in more than 70 countries. Through its Avis and Budget brands, the Company is a leading vehicle rental company in each of North America, Australia, New Zealand and certain other regions based on published airport statistics. Avis Budget Group is headquartered in Parsippany, N.J. and has more than 22,000 employees. For more information about Avis Budget Group, visit www.avisbudgetgroup.com.

Forward-Looking Statements
This press release contains certain forward-looking statements that are subject to known and unknown risks and uncertainties that could cause actual results to differ materially from those expressed or implied by such statements, including, without limitation, risks relating to a possible transaction involving Dollar Thrifty Automotive Group, Inc. Important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements are specified in Avis Budget Group's Annual Report on Form 10-K for the year ended December 31, 2009 including under headings such as "Forward-Looking Statements", “Risk Factors” and "Management’s Discussion and Analysis of Financial Condition and Results of Operations" and in other filings and furnishings made by the Company with the SEC from time to time. Except to the extent required by applicable federal securities laws, the Company undertakes no obligation to release publicly any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events.

# # #

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MacKenzie Partners
Dan Burch
800.322.2885

EX-99.1 2 exhibit99.htm PRESS RELEASE

Press Release

Exhibit 99.1

FOR IMMEDIATE RELEASE

DOLLAR THRIFTY AUTOMOTIVE GROUP COMMENTS ON AVIS BUDGET GROUP LETTER

TULSA, Okla., May 4, 2010 -- Dollar Thrifty Automotive Group, Inc. (NYSE: DTG) today issued the following statement on Avis Budget Group's May 3, 2010 letter:

"Consistent with its obligations under the Hertz merger agreement and with its fiduciary obligations to shareholders, the Dollar Thrifty board has communicated to Avis Budget that the board is prepared to entertain a 'substantially higher offer' to acquire Dollar Thrifty as proposed by Avis Budget on May 3."

"Separately, Dollar Thrifty said that it regrets that Avis Budget in its May 3 letter mischaracterized prior events and interactions between the two companies. Furthermore, Avis Budget's letter erroneously calculated the breakup fee with respect to the Hertz/Dollar Thrifty merger agreement, which at 3.5 percent of transaction value, is customary and consistent with precedent transactions. Additionally, Dollar Thrifty believes that the other provisions of its merger agreement with Hertz are entirely customary and consistent with applicable law."

"While it is Dollar Thrifty's policy not to comment on matters such as those to which the Avis Budget letter pertains, the Company believed that a departure from its policy was necessary in light of the inaccuracies contained in Avis Budget's letter."

About Dollar Thrifty Automotive Group, Inc.

Dollar Thrifty Automotive Group, Inc. is headquartered in Tulsa, Oklahoma. Driven by the mission "Value Every Time," the Company's brands, Dollar Rent A Car and Thrifty Car Rental, serve value-conscious travelers in over 80 countries. Dollar and Thrifty have approximately 600 corporate and franchised locations in the United States and Canada, operating in virtually all of the top U.S. and Canadian airport markets. The Company's approximately 6,000 employees are located mainly in North America, but global service capabilities exist through an expanding international franchise network. For additional information, visit http://www.dtag.com/ or the brand sites at http://www.dollar.com/ and http://www.thrifty.com/.

REVLON DUTIES AND "FIDUCIARY OUTS"

Hertz and Dollar Thrifty had signed a definitive agreement for Hertz to acquire Dollar Thrifty, so Dollar Thrifty should have been off the market, right? So what was Avis Budget trying to do in sending a letter to Dollar Thrifty indicating that Avis Budget would like to make "a substantially higher offer" to acquire Dollar Thrifty? Did Hertz fail to "lock up" Dollar Thrifty in the merger agreement?

The answer is that corporation law generally, and Delaware corporation law in particular, prohibits a public company from entering into a merger or acquisition agreement that prevents the company from considering and accepting a "superior offer." While the directors of a public company usually have broad discretion in conducting the corporation's affairs under the business judgment rule, the rule is limited in situations involving the sale of control of the company. The business judgment rule is a presumption that the directors, in making business decisions, have "acted on an informed basis, in good faith, on the honest belief that the action taken was in the best interest of the company"[1] and so have satisfied their duties of care and loyalty to the corporation and its stockholders. But in situations involving the sale of the company or the sale of control, the directors have a heightened duty of care—often called *Revlon* duties—to obtain the highest value reasonably available to the company's stockholders and the usual business judgment presumption does not apply.[2] Moreover, if the directors' decisions are challenged, the court will not employ the usual business judgment presumption but rather will review the directors' decision with "enhanced scrutiny." Under this test, the independent, disinterested directors must affirmatively prove that the board's decisions were adequately informed and within the range of reasonable decisions under the circumstances to maximize the value to the stockholders.[3]

1. Aronson v. Lewis, 473 A.2d 805, 811 (Del. 1984); *see* Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 949 (Del. 1985) (stating that under the business judgment rule a court will decline to "substitute its judgment for that of the board if the latter's decision can be 'attributed to any rational business purpose.'") (quoting Sinclair Oil Corp. v. Levien, 280 A.2d 717, 720 (Del. 1971)).

2. *See* Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182-83 (Del. 1986) (explaining that, in the change-of-control context, the duty of loyalty requires "the maximization of the company's value at a sale for the stockholders' benefit"), *aff'g* 501 A.2d 1239 (Del. Ch. 1985); *accord* Paramount Commc'ns, Inc. v. QVC Network Inc., 637 A.2d 34, 44 (Del. 1994) ("In the sale of control context, the directors must focus on one primary objective—to secure the transaction offering the best value reasonably available for the stockholders—and they must exercise their fiduciary duties to further that end.").

3. *See Paramount*, 637 A.2d at 45. *See generally* J. Travis Laster, *The Effect of Stockholder Approval on Enhanced Scrutiny*, 40 WM. MITCHELL L. REV. 1443 (2014) (reviewing standards under Delaware law). A "cleansing stockholder vote"—that is, "a fully informed, uncoerced vote of the disinterested stockholders"—approving the deal, however, returns the standard to the business judgment rule. Corwin v. KKR Financial Holdings LLC, 125 A.3d 304, 309 (Del. 2015).

Revlon itself illustrates the heightened duty in a way directly relevant to the Hertz/Dollar Thrifty agreement. The board of directors of Revlon, Inc. had agreed to sell the company for $56 cash per share to Forstmann-Little & Co., a private equity firm specializing in leveraged buyouts (LBOs), in order to prevent Revlon from being acquired in a hostile takeover by Pantry Pride, Inc.[4] Pantry Pride responded with a new proposal, increasing the price of its all-cash offer from $53 cash per share to $56.25 cash per share. Forstmann responded with a new offer of $57.25 cash per share, conditioned, among other things, on:

(1) a "lock-up" option to purchase Revlon's Vision Care and National Health Laboratories divisions for $525 million, some $100–$175 million below the value ascribed to them by Revlon's investment bankers, if another acquirer obtained 40% of Revlon's shares;

(2) a "no-shop" provision, which would preclude Revlon from soliciting offers for the company from other firms and obligated the company to deal exclusively with Forstmann; and

(3) a $25 million termination fee if the new agreement terminated or another acquirer obtained more than 19.9% of Revlon's stock.

The Revlon board unanimously approved the Forstmann proposal.

Pantry Pride responded with a new topping offer of $58 cash per share. It also filed an action in the Court of Chancery in Delaware, where Revlon was incorporated, to enjoin Revlon's sale to Forstmann-Little on the grounds that the Revlon board had breached its fiduciary duties to the Revlon stockholders.[5] The Chancery Court agreed and entered a preliminary injunction enjoining the lock-up, no-shop, and termination fee provisions in the Forstmann purchase agreement. The Supreme Court of Delaware affirmed, holding that when the board of a Delaware corporation decides to "sell the company," its duty "changed from the preservation of Revlon as a corporate entity to the maximization of the company's value at a sale for the stockholders benefit."[6] In perhaps the most quoted sentence of the opinion, the court said that "[t]he directors' role changed from defenders of the corporate bastion to auctioneers charged with getting the best price for the stockholders at a sale of the company."[7] Once the board

4. Revlon employed what is called a *white knight strategy*. A "white knight" is a company or other investor supported by the target firm's board of directors and management that acquires the target in order to avoid the target being taken over by another company (the "raider" or "black knight") opposed by the target's management. Typically, the white knight's business strategy for the target is more in line with the thinking of the target's management and the white knight will often retain the target's management, while the raider would dramatically change the target's business strategy—perhaps by breaking up the target and selling it in pieces—and not retain the target's management. A white knight usually will have to make a superior offer to that of the raider in order to have a credible bid for the target's stockholders (who by this point in the process are largely arbitrageurs). This can result in a bidding war, with the raider responding with an even more superior offer, and so on, so that the strategy can have significant benefit to the target's stockholders.

5. Technically, MacAndrews & Forbes Holdings, Inc., the controlling shareholder of Pantry Pride, filed the action.

6. *Revlon*, 506 A.2d at 182.

7. *Id*.

recognized that Revlon had to be sold, which it had done before the agreement with Forstmann was signed, the board violated its duty to maximize stockholder value by agreeing to the lock-up, no-shop, and termination fee provisions since these provisions had the effect of ending an active auction and foreclosing further bidding to the detriment of the Revlon stockholders.

To ensure that the board of directors can satisfy their *Revlon* duties, agreements for the sale of the company usually contain what has become known as a "fiduciary out." The most common form of fiduciary out is a reservation of right to the target's board to consider and accept superior offers from third parties to terminate the executed agreement. The agreement between Hertz and Dollar Thrifty gave Dollar Thrifty's board such a right.

What constitutes a "superior proposal" can be a difficult question both in theory and in practice. Even in competing all-cash offers, the question of superiority can be muddled because of likely differences in the time to closing or even in the certainty of closing. Where antitrust questions are present, for example, the offer with a higher nominal price may also present a higher risk that the deal will be blocked from closing on antitrust grounds. Similarly, other risks to the certainty of closing may be present, say when the offer is conditioned on the offeror's ability to obtain financing for the deal or on certain due diligence requirements. Comparative valuation becomes even more complicated when the offers mix cash and stock or when they are all stock.

Agreement and Plan of Merger by and among
Hertz Global Holdings, Inc., HDTMS, Inc.,
and Dollar Thrifty Automotive Group, Inc. (Apr. 25, 2010)

[Section 5.03(a)—No shop provision] From and after the date of this Agreement until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.01, and except as otherwise provided for in this Agreement, the Company [Dolar Thrifty] shall not, and shall cause its Affiliates not to and shall not authorize or permit its and their respective directors, officers, employees, investment bankers, financial advisors, attorneys, accountants or other advisors, agents or representatives (collectively "Representatives") to, directly or indirectly: (i) solicit, initiate, knowingly facilitate or knowingly encourage the submission or making of any Company Competing Proposal, (ii) participate in any discussions or negotiations regarding, or furnish to any person any material nonpublic information in furtherance of (excluding, for the avoidance of doubt, information furnished to a current or prospective commercial counterparty (including any customer or supplier) of the Company or any of its Subsidiaries for the sole purpose of furthering an existing or prospective commercial arrangement with such person and, in any event, not in contemplation of any Company Competing Proposal), any Company Competing Proposal or (iii) enter into any agreement regarding a Company Competing Proposal. The Company shall, and shall cause its Affiliates and its Representatives to, immediately cease and cause to be terminated all existing discussions or negotiations with any person conducted heretofore with respect to any Company Competing Proposal and promptly request the prompt return or

destruction of all confidential information previously furnished, and the Company shall take all reasonably necessary actions to secure its rights and ensure the performance of any such person's obligations under any applicable confidentiality agreement to return or destroy such information. The Company shall take all actions necessary to enforce its rights under the provisions of any "standstill" agreement between the Company and any person (other than Parent [Hertz Global Holdings]), and shall not grant any waiver of, or agree to any amendment or modification to, any such agreement, to permit such person to submit a Company Competing Proposal. The Company shall ensure that its Representatives are aware of the provisions of this Section 5.03, and any violation of the restrictions contained in this Section 5.03 by its Board of Directors (including any committee thereof) or its Representatives shall be deemed to be a breach of this Section 5.03 by the Company.

[Section 5.03(b)] Notwithstanding the restrictions set forth in Section 5.03(a), at any time prior to obtaining the Company Stockholder Approval, if after the date hereof the Company receives an unsolicited Company Competing Proposal that the Board of Directors of the Company determines in good faith (after consultation with its financial advisors and outside legal counsel) constitutes, or would reasonably be expected to result in, a Superior Proposal, the Board of Directors of the Company determines in good faith (after consultation with its outside legal counsel) that the failure to take the actions described in clauses (i) and (ii) below would be inconsistent with the Board of Directors' fiduciary duties under Delaware Law, and such Company Competing Proposal has not resulted from the Company breaching its obligations under this Section 5.03, the Company may (i) furnish nonpublic information to the person making such Company Competing Proposal, if, and only if, prior to so furnishing such information, the Company receives from such person an executed confidentiality agreement on terms no more favorable to such person than those contained in the Confidentiality Agreement and (ii) participate in discussions or negotiations with such person (and its Representatives) making such Company Competing Proposal with respect to such Company Competing Proposal; *provided* that the Company shall give written notice to Parent after any such determination by the Company's Board of Directors and before taking any of the actions described in the foregoing clauses (i) and (ii). The Company shall promptly notify Parent (within no more than 48 hours) of the communication or receipt of any Company Competing Proposal, any request for information that could reasonably be expected to be related to a Company Competing Proposal, or any request for discussions or negotiations that could reasonably be expected to be related to a Company Competing Proposal, indicating, in connection with such notice, the identity of the person making such Company Competing Proposal or request and the material terms and conditions thereof.

The Company shall keep Parent reasonably informed on a current basis (within no more than 48 hours) of any material developments in the status and terms of any such Company Competing Proposal or request (including whether such Company Competing Proposal or request has been withdrawn or rejected and any material change to the terms thereof) and shall concurrently provide Parent with copies of any material written information or materials that it provides to the

person making the request therefor that have not been previously provided to Parent.

[Section 5.03(d)] Notwithstanding anything herein to the contrary, if prior to the receipt of the Company Stockholder Approval, the Board of Directors of the Company has determined in good faith, after consultation with the Company's financial advisors and outside legal counsel, that an unsolicited Company Competing Proposal made after the date hereof that has not resulted from a breach of the Company's obligations under this Section 5.03 constitutes a Superior Proposal, then the Board of Directors of the Company shall provide written notice to Parent at least two business days in advance of making or effecting a Company Change of Recommendation (a "Notice of Superior Proposal"). A Notice of Superior Proposal shall advise Parent that the Board of Directors of the Company has received a Superior Proposal and shall include any information and materials required to be delivered under Section 5.03(b) that have not yet been provided to Parent (including the most recent version of any written agreement relating to the transaction that constitutes a Superior Proposal or, if no such agreement exists, a written summary of the material terms and conditions of such Superior Proposal). If Parent, within two business days following its receipt of a Notice of Superior Proposal (the "Notice Period"), makes an offer that, as determined in good faith by the Company's Board of Directors, after consultation with its financial advisors and outside legal counsel, results in the applicable Company Competing Proposal no longer being a Superior Proposal, then the Company shall not make a Company Change of Recommendation with respect to such Company Competing Proposal and shall have no right to terminate this Agreement pursuant to Section 8.01(f) as a result of such Company Competing Proposal. If Parent shall not have made such an offer within the Notice Period, then the Board of Directors of the Company may make a Company Change of Recommendation with respect to the Superior Proposal to which such Notice Period applied and/or may terminate this Agreement to accept such Superior Proposal pursuant to Section 8.01(f) after paying the Company Termination Fee in accordance with Section 8.02. During the Notice Period, the Company shall, and shall cause its Representatives, including, without limitation, its financial advisors and outside legal counsel, to negotiate in good faith with Parent and its Representatives (to the extent Parent desires to negotiate) with respect to any offer from Parent. Any (i) material revisions to the terms of a Superior Proposal or (ii) material revisions to a Company Competing Proposal that the Company's Board of Directors had determined no longer constitutes a Superior Proposal, shall constitute a new Company Competing Proposal and shall require the Company to deliver to Parent a new Notice of Superior Proposal and a new Notice Period shall commence thereafter. Except in accordance with the procedures set forth in this Section 5.03(d), the Company shall have no right to terminate this Agreement pursuant to Section 8.01(f).

[Section 8.01(f)] *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: . . .

(f) by the Company, at any time prior to the receipt of the Company Stockholder Approval, if the Company is simultaneously entering into a definitive agreement to effect a Superior Proposal; *provided*, that in order for the termination of this Agreement pursuant to this Section 8.01(f) to be effective, (i) the Company and its Board of Directors shall have complied with the procedures and obligations set forth in Section 5.03(d) with respect to such Superior Proposal and (ii) the Company shall have paid the Company Termination Fee in accordance with Section 8.02.

NOTES

1. There are no inherent fiduciary outs under Delaware law. A fiduciary out must be negotiated and explicitly incorporated in the merger agreement. Typically, the board's *Revlon* duties terminate following the approval of an agreement by the company's shareholders.

2. Section 5.03(a) is a "no shop" provision. It precludes Dollar Thrifty from soliciting, providing due diligence, negotiating, or entering into a contract with a third party. The provision, however, is subject to exceptions in the remainder of Section 5.03.

3. Section 5.03(b) gives Dollar Thrifty the right to consider, provide due diligence, and negotiate an offer with a third party after the execution of the Hertz agreement but prior to the vote of the Dollar Thrifty shareholders to approve the Hertz transaction. The notice provisions also allow Hertz the ability to consider making a counteroffer.

4. Section 5.03(d) requires Dollar Thrifty, if it receives a superior offer, to provide Hertz with a "Notice of Superior Proposal" detailing the material terms and conditions of the proposal and giving Hertz two business days after receiving notice to respond with a counteroffer before the Dollar Thrifty board can change its recommendation to the Dollar Thrifty stockholders as to whether to accept the Hertz offer. If Hertz either does not make a counteroffer or if its counteroffer is insufficient to negate the third party's proposal as a superior offer, the Dollar Thrifty board may change its recommendation and/or terminate the Hertz agreement pursuant to Section 8.01(f). The original agreement may contain a *matching right provision* that provides that a matching offer by the original buyer will negate the superiority of the third-party offer.

5. Section 8.01(f) provides that Dollar Thrifty may terminate the Hertz agreement if Dollar Thrifty simultaneously enters into a definitive agreement to effect a superior offer from a third party.

6. Section 8.01(f) also provides that if Dollar Thrifty terminates the Hertz proposal to accept a superior offer, Dollar Thrifty must pay Hertz a "termination fee" (sometimes called a "break-up fee"), which under the Hertz agreement was $44.6 million, or about 3.7% of the $1.2 billion Hertz was to pay under the agreement to buy Dollar Thrifty. Delaware courts have held that the target may contract to pay the original buyer a termination fee that is reasonable in the circumstances.[8] A

8. *See* Paramount Commc'ns, Inc. v. QVC Network Inc., 637 A.2d 34, 37 (Del. 1994).

sufficient but not necessary condition of reasonableness is that the fee will not materially impede a competing offer from a serious third-party bidder.[9] The conventional wisdom is that termination fees under 4% are reasonable[10] and most termination fees are in the range of 3%–4% of the original buyer's transaction value.[11] Delaware courts, however, have resisted providing a bright-line test for reasonableness of termination fees. Even otherwise reasonable termination fees might be struck down if the court views them as part of a series of impermissible deal protection measures.[12]

9. *See, e.g.*, *In re* Toys "R" Us, Inc. S'holder Litig., 877 A.2d 975, 1021 (Del. Ch. 2005) ("If the marginal cost to a second bidder of the difference between a 2.5% termination fee without matching rights and a 3.75% termination fee with matching rights really raises a reasonable concern that any material higher bid would be economically irrational, then that suggests that the board got close to the Company's maximum economic value, when measured by fundamental measures of its earning power.").

10. *See, e.g.*, *In re* Answers Corp. S'holder Litig., 2011 WL 1366780, at *4 n.47 (Del. Ch. Apr. 11, 2011) (denying motion for preliminary injunction for merger involving a termination fee of 4.4% of equity value); *In re* Dollar Thrifty S'holder Litig., 14 A.3d at 613-14 (upholding termination fee of 3.9% of equity value); *In re* Toys "R" Us, Inc. S'holder Litig., 877 A.2d 975 (Del. Ch. June 24, 2005) (upholding termination fee of 3.75% of equity value combined with matching rights).

11. *See* Jin Q. Jeon & James A. Ligon, *How Much Is Reasonable?: The Size of Termination Fees in Mergers and Acquisitions,* 17 J. CORP. FIN. 959, 963 tbl.1 (2011). *See generally* Fernán Restrepo & Guhan Subramanian, *The New Look of Deal Protection*, 69 STAN. L. REV. 1013 (2017) (providing an overview of modern deal protection devices).

12. *See, e.g.*, *Paramount*, 637 A.2d at 48-50 (invalidating a lockup stock option, a no shop provision, and a termination fee).

The FTC Settlement

FTC Requires Divestitures for Hertz's Proposed $2.3 Billion Acquisition of Dollar Thrifty to Preserve Competition in Airport Car Rental Markets

Hertz Agrees to Sell Advantage Rent A Car Business, 29 Other On-Airport Locations Nationwide

FOR RELEASE

November 15, 2012

TAGS: Competition

The Federal Trade Commission will require Hertz Global Holdings, Inc. (Hertz) to sell its Advantage Rent A Car (Advantage) business, as well as the rights to operate 29 Dollar Thrifty Automotive Group, Inc. (Dollar Thrifty) on-airport locations around the country, under a proposed settlement that resolves charges that Hertz's $2.3 billion acquisition of Dollar Thrifty would have been anticompetitive.

As part of the proposed settlement, Hertz has agreed to sell the entire Advantage business as well as 16 Dollar Thrifty on-airport locations where Advantage does not yet operate to Franchise Services of North America, Inc. (FSNA) and Macquarie Capital (USA) Inc. (Macquarie). FSNA currently operates the U-Save rental car business. In addition, Hertz will sell another 13 Dollar Thrifty on-airport locations to FSNA/Macquarie or another FTC-approved buyer after the deal closes.

"American consumers rent more than 50 million vehicles at airports nationwide each year, spending $11 billion, so this is a real pocketbook issue for everyday people," said FTC Chairman Jon Leibowitz. "Today's bipartisan action by the FTC will ensure that consumers are not forced to pay higher prices for rental cars when they travel."

Hertz and Dollar Thrifty are close competitors in U.S. airport car rental markets. The FTC complaint alleges that the deal, as it was originally proposed, would have harmed competition at 72 airports around the United States, by reducing the number of competitors, diminishing future competition, and enabling the combined firm to raise rental car prices for consumers.

Hertz, headquartered in Park Ridge, New Jersey, offers two brands, Hertz "Classic" and Advantage. Hertz maintains a peak domestic car rental fleet of approximately 355,000 vehicles and employs about 16,400

people in the United States. In 2011, Hertz earned approximately $3.3 billion in U.S. car rental revenues from transactions at airport locations. On a national level, Hertz's market share of all airport car rentals is approximately 26 percent.

Dollar Thrifty is based in Tulsa, Oklahoma. It operates two brands, Dollar and Thrifty, and maintains an average fleet of approximately 107,000 vehicles, while employing about 5,900 people in the United States. In 2011, Dollar Thrifty earned approximately $1.4 billion in U.S. car rental revenues, of which approximately 90 percent came from airport locations. On a national level, Dollar Thrifty's market share of all airport car rentals is approximately 12 percent.

Both Hertz and Dollar Thrifty offer car rentals to consumers for leisure and business purposes, and both provide this service to deplaning passengers at airports across the United States. Hertz and Dollar Thrifty are two of four firms that dominate the U.S. airport car rental markets. Hertz and Dollar Thrifty, along with Avis Budget Group, Inc. (which operates the Avis and Budget brands), and Enterprise Holdings, Inc. (which operates the National, Alamo and Enterprise brands), are the only rental car providers with a national presence, large fleets, well-known brands, and the most convenient airport locations. Together, these four firms account for approximately 98 percent of total airport car rentals in the United States.

Under the terms of an agreement signed on August 26, 2012, Hertz intends to buy rental car competitor Dollar Thrifty for $2.3 billion. According to the FTC's complaint, Hertz's original proposed acquisition of Dollar Thrifty would be anticompetitive and would violate both Section 5 of the FTC Act and Section 7 of the Clayton Act, in a number of airport car rental markets.

By reducing the number of major competitors from four to three, the FTC alleges, the proposed acquisition would lead to substantially more concentration in 72 airport rental car markets nationwide. The complaint also states that the proposed acquisition would eliminate head-to-head competition between Hertz and Dollar Thrifty at these airports, which include large ones such as Baltimore/Washington International Thurgood Marshall Airport, Chicago O'Hare International Airport, and JFK International Airport in New York.

Hertz's ability to raise rates is currently limited by its competition with Dollar Thrifty, according to the FTC. As the transaction was originally proposed, the combination of Hertz and Dollar Thrifty would have eliminated this constraint, allowing the combined firm to increase prices to consumers, the FTC alleged. In addition, according the agency, the proposed acquisition would make anticompetitive coordinated conduct among the remaining three national car rental competitors more likely.

By requiring Hertz to sell its entire Advantage business, as well as a number of additional on-airport locations, the settlement will replace the current and future competition that otherwise would have been lost as a result of the deal, while also eliminating the likelihood of coordinated interaction post-acquisition. According to the FTC, the settlement will enable Advantage to become the fourth-largest car rental competitor in the United States, and allow it to compete effectively and immediately for the business of deplaning passengers at airports throughout the country.

The FTC has appointed an interim monitor to oversee the sale of the assets as required by the proposed consent order. It also can seek civil penalties if it finds that Hertz has not complied with the order within 10 days of when it becomes final.

The Commission's vote approving the complaint and proposed settlement order was 4-1, with Commissioner J. Thomas Rosch voting no. Commission Rosch explained that, "I voted against acceptance of the consent decree because I found it inadequate to resolve the competitive concerns at several dozen other airports

affected by the transaction. I would have instead voted to challenge the transaction because of the significant risk of post-merger coordinated interaction among the remaining competitors."

The proposed order will be subject to public comment for 30 days, until December 17, 2012, after which the Commission will decide whether to make it final. Comments should be sent to: FTC, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Comments can be submitted electronically.

NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The issuance of a complaint is not a finding or ruling that the respondent has violated the law. A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of $16,000.

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Bureau of Competition, Federal Trade Commission, 601 New Jersey Ave., Room 7117, Washington, DC 20001. To learn more about the Bureau of Competition, read Competition Counts. Like the FTC on Facebook, follow us on Twitter, and subscribe to press releases for the latest FTC news and resources.

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(FTC File No. 121-0120)

Related Cases

Hertz Global Holdings, Inc., In the Matter of

101 0137

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of	)	
	)	**Docket No. C-4376**
Hertz Global Holdings, Inc.	)	
a corporation	)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Hertz Global Holdings, Inc. ("Hertz") and Dollar Thrifty Automotive Group, Inc. ("Dollar Thrifty"), having executed an agreement and plan of merger, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Hertz is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 225 Brae Boulevard, Park Ridge, New Jersey 07656. Among other industries, Hertz is engaged in the car rental business.

2. Respondent is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are companies whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

3. Under the terms of an agreement and plan of merger ("Agreement") signed on August 26, 2012, Hertz will acquire all shares of Dollar Thrifty's common stock through a cash tender offer of $87.50 per share, valued at a total of approximately $2.3 billion (the "Acquisition").

III. THE RELEVANT PRODUCT MARKET

4. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is airport car rentals. Airport car rentals include all car rentals at airport locations. A narrower alternative relevant product market is non-contracted airport car rentals, which excludes rentals made at pre-negotiated rates and terms.

IV. THE RELEVANT GEOGRAPHIC MARKETS

5. For the purposes of this Complaint, the relevant geographic markets in which to assess the competitive effects of the Acquisition are individual airports serving the following destinations:

a. Albuquerque, New Mexico (Albuquerque International Sunport Airport)
b. Atlanta, Georgia (Hartsfield-Jackson International Airport)
c. Austin, Texas (Austin-Bergstrom International Airport)
d. Baltimore, Maryland (Baltimore/Washington International Thurgood Marshall Airport)
e. Boston, Massachusetts (Logan International Airport)
f. Burbank, California (Burbank Bob Hope Airport)
g. Burlington, Vermont (Burlington International Airport)
h. Charleston, South Carolina (Charleston International Airport)
i. Charlotte, North Carolina (Charlotte Douglas International Airport)
j. Chicago, Illinois (Chicago Midway International Airport)
k. Chicago, Illinois (Chicago O'Hare International Airport)
l. Cincinnati, Ohio (Cincinnati/Northern Kentucky International Airport)
m. Cleveland, Ohio (Cleveland Hopkins International Airport)
n. Colorado Springs, Colorado (Colorado Springs Airport)
o. Dallas, Texas (Dallas Love Field Airport)
p. Dallas, Texas (Dallas/Fort Worth International Airport)
q. Detroit, Michigan (Detroit Metro Airport)
r. Denver, Colorado (Denver International Airport)
s. Des Moines, Iowa (Des Moines Airport)
t. El Paso, Texas (El Paso Airport)
u. Fort Lauderdale, Florida (Fort Lauderdale-Hollywood Airport)
v. Fort Myers, Florida (Southwest Florida International Airport)
w. Fort Walton Beach, Florida (Fort Walton Beach Regional Airport)

x. Harlingen, Texas (Valley International Airport)
y. Hartford, Connecticut (Bradley International Airport)
z. Hilo, Hawaii (Hilo International Airport)
aa. Honolulu, Hawaii (Honolulu International Airport)
bb. Houston, Texas (George Bush Intercontinental Airport)
cc. Houston, Texas (William P. Hobby Airport)
dd. Jacksonville, Florida (Jacksonville International Airport)
ee. Kahului, Hawaii (Kahului Airport)
ff. Las Vegas, Nevada (McCarran International Airport)
gg. Lihue, Hawaii (Lihue Airport)
hh. Los Angeles, California (Los Angeles International Airport)
ii. Louisville, Kentucky (Louisville International Airport)
jj. Manchester, New Hampshire (Manchester-Boston Regional Airport)
kk. Miami, Florida (Miami International Airport)
ll. Milwaukee, Wisconsin (Milwaukee International Airport)
mm. Minneapolis-St. Paul, Minnesota (Minneapolis-St. Paul International Airport)
nn. Nashville, Tennessee (Nashville International Airport)
oo. New York, New York (LaGuardia Airport)
pp. New York, New York (John F. Kennedy International Airport)
qq. Newark, New Jersey (Newark Liberty International Airport)
rr. Norfolk, Virginia (Norfolk International Airport)
ss. Oakland, California (Oakland International Airport)
tt. Oklahoma City, Oklahoma (Will Rogers World Airport)
uu. Omaha, Nebraska (Omaha Airport)
vv. Los Angeles, California (Ontario International Airport)
ww. Orange County, California (John Wayne Airport)
xx. Orlando, Florida (Orlando International Airport)
yy. Pensacola, Florida (Pensacola International Airport)
zz. Phoenix, Arizona (Sky Harbor Airport)
aaa. Pittsburgh, Pennsylvania (Pittsburgh International Airport)
bbb. Portland, Oregon (Portland International Airport)
ccc. Providence, Rhode Island (T.F. Green Airport)
ddd. Raleigh-Durham, North Carolina (Raleigh-Durham International Airport)
eee. Reno, Nevada (Reno-Tahoe International Airport)
fff. Richmond, Virginia (Richmond International Airport)
ggg. Sacramento, California (Sacramento International Airport)
hhh. Salt Lake City, Utah (Salt Lake City International Airport)
iii. San Antonio, Texas (San Antonio International Airport)
jjj. San Diego, California (San Diego International Airport)
kkk. Sanford, Florida (Orlando-Sanford International Airport)
lll. San Francisco, California (San Francisco International Airport)
mmm. San Jose, California (Norman Y. Mineta San Jose International Airport)
nnn. Sarasota, Florida (Sarasota Bradenton International Airport)
ooo. Seattle, Washington (Seattle-Tacoma International Airport)

ppp. Tampa, Florida (Tampa International Airport)
qqq. Tulsa, Oklahoma (Tulsa International Airport)
rrr. Washington, District of Columbia (Ronald Reagan National Airport)
sss. Washington, District of Columbia (Washington Dulles International Airport)
ttt. West Palm Beach, Florida (Palm Beach International Airport)

IV. ENTRY CONDITIONS

6. Entry or expansion into the relevant markets described in Paragraphs 5 and 6 will not occur in a timely, likely or sufficient manner to avert the anticompetitive effects that likely will result from the Acquisition. In order to compete most effectively for airport car rentals, a firm must have on-airport concession locations, a recognized brand, relationships with online travel agencies and other distribution channels, and be of a sufficient size to achieve economies of scale.

V. EFFECTS OF THE ACQUISITION

7. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

a. by eliminating actual, direct, and substantial competition between Hertz and Dollar Thrifty for the sale of the relevant products in each of the relevant markets;

b. by eliminating future competition between Hertz's Advantage brand and Dollar Thrifty for the sale of the relevant products in several of the relevant markets;

c. by increasing the likelihood that Respondent Hertz would unilaterally exercise market power in each of the relevant markets for the relevant products;

d. by increasing the likelihood and degree of coordinated interaction between or among suppliers of the relevant products in each of the relevant markets;

e. by increasing the likelihood that U.S. customers would be forced to pay higher prices for the relevant products in each of the relevant markets.

VI. VIOLATIONS CHARGED

8. The Acquisition Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

10. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifteenth day of November, 2012, issues its Complaint against said Respondent.

By the Commission, Commissioner Rosch dissenting.

Donald S. Clark
SEAL Secretary

Investor Relations

PRESS RELEASE

Hertz Completes Acquisition Of Dollar Thrifty

PARK RIDGE, N.J., Nov. 20, 2012 /PRNewswire/ -- Hertz Global Holdings, Inc. (NYSE: HTZ) announced today that it has successfully completed its previously announced acquisition of Dollar Thrifty Automotive Group, Inc. (NYSE: DTG). As a result of the transaction, Dollar Thrifty has become a wholly owned subsidiary of Hertz.

Hertz Chairman and Chief Executive Officer, Mark P. Frissora said: "In the 94-year history of Hertz, our employees and business partners have never been this excited. Over the past six years, we have competed successfully with only one global premium brand in place while our competitors have had multiple brands to work against us. Starting today, we now have two additional, popular brands to compete across multiple market segments, with plans to offer them to our many partners and customers. That's why we are pleased to announce that the transaction is complete, and we look forward to working expeditiously with Dollar Thrifty to integrate the strengths of our two great companies."

Hertz completed a tender offer in which it purchased approximately 99.6% of the shares of Dollar Thrifty common stock then outstanding at $87.50 per share in cash.

Hertz subsequently acquired the remaining shares of Dollar Thrifty common stock by means of a short-form merger in which such shares were converted into the right to receive the same $87.50 per share in cash that will be paid in the tender offer. In order to accomplish the short-form merger, Hertz exercised its "top-up" option to purchase additional shares of Dollar Thrifty common stock directly from Dollar Thrifty. Dollar Thrifty's common stock will no longer be listed on the New York Stock Exchange.

On November 20, 2012, Hertz posted to its website a summary of the divestiture agreement that Hertz entered into with the Federal Trade Commission in connection with the acquisition of Dollar Thrifty, a list of related frequently asked questions and PowerPoint slides.

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About Hertz Global Holdings, Inc.

Hertz is the largest worldwide airport general use car rental brand, operating from approximately 8,800 corporate and licensee locations in approximately 150 countries in North America, Europe, Latin America, Asia, Australia, Africa, the Middle East and New Zealand. Hertz is the number one airport car rental brand in the U.S. and at 111 major airports in Europe. In addition, the Company has sales and marketing centers in 60 countries which promote Hertz business both within and outside such country. Product and service initiatives such as Hertz Gold Choice, Hertz #1 Club Gold®, NeverLost® customized, onboard navigation systems, Sirius XM Satellite Radio, and unique cars and SUVs offered through the Company's Adrenaline, Prestige and Green Traveler Collections, set Hertz apart from the competition. In 2008, the Company entered the global car sharing market with its service now referred to as Hertz On Demand which rents cars by the hour and/or by the day, at various locations in the U.S., Canada and Europe. Hertz also operates one of the world's largest equipment rental businesses, Hertz Equipment Rental Corporation, offering a diverse line of rental equipment, from small tools and supplies to earthmoving equipment, as well as new and used equipment for sale, to customers ranging from major industrial companies to local contractors and consumers, from approximately 340 branches in the United States, Canada, China, France, Spain and Saudi Arabia, as well as through its international licensees. Hertz also owns Donlen Corporation, based in Northbrook, Illinois, which is a leader in providing fleet leasing and management services.

About Dollar Thrifty Automotive Group, Inc.

Through its Dollar Rent A Car and Thrifty Car Rental brands, the Company has been serving value-conscious leisure and business travelers since 1950. The Company maintains a strong presence in domestic leisure travel in virtually all of the top U.S. and Canadian airport markets, and also derives a significant portion of its revenue from international travelers to the U.S. under contracts with various international tour operators. Dollar and Thrifty have approximately 280 corporate locations in the United States and Canada, with approximately 5,800 employees located mainly in North America. In addition to its corporate operations, the Company maintains global service capabilities through an expansive franchise network of approximately 1,300 franchise locations in 82 countries. For additional information, visit www.dtag.com or the brand sites at www.dollar.com and www.thrifty.com.

Cautionary Note Concerning Forward-Looking Statements

This communication contains "forward-looking statements". Examples of forward-looking statements include information concerning Hertz's outlook, anticipated revenues and results of operations, as well as any other statement that does not directly relate to any historical or current fact. These forward-looking statements often include words such as "believe," "expect," "project," "anticipate," "intend," "plan," "estimate," "seek," "will," "may," "would," "should," "could," "forecasts" or similar expressions. These statements are based on certain assumptions that Hertz has made in light of its experience in the industry as well as its perceptions of historical trends, current conditions, expected future developments and other factors that Hertz believes are appropriate in these circumstances. We believe these judgments are reasonable, but you should understand that these statements are not guarantees of performance or results, and our actual results could differ materially from those expressed in the forward-looking statements due to a variety of important factors, both positive and negative.

Among other items, such factors could include: the risk that expected synergies, operational efficiencies and cost savings from a Dollar Thrifty acquisition may not be fully realized or realized within the expected time frame; the risk that unexpected costs will be incurred in connection with the proposed Dollar Thrifty transaction; the retention of certain key employees of Dollar Thrifty may be difficult; the operational and profitability impact of divestitures required to be undertaken to secure regulatory approval for an acquisition of Dollar Thrifty; levels of travel demand, particularly with respect to airline passenger traffic in the United States and in global markets; significant changes in the competitive environment, including as a result of industry consolidation, and the effect of competition in our markets, including on our pricing policies or use of incentives; occurrences that disrupt rental activity during our peak periods; our ability to achieve cost savings and efficiencies and realize opportunities to increase productivity and profitability; an increase in our fleet costs as a result of an increase in the cost of new vehicles and/or a decrease in the price at which we dispose of used vehicles either in the used vehicle market or under repurchase or guaranteed depreciation programs; our ability to accurately estimate future levels of rental activity and adjust the size of our fleet accordingly; our ability to maintain sufficient liquidity and the availability to us of additional or continued sources of financing for our revenue earning equipment and to refinance our existing indebtedness; safety recalls by the manufacturers of our vehicles and equipment; a major disruption in our communication or centralized information networks; financial instability of the manufacturers of our vehicles and equipment; any impact on us from the actions of our licensees, franchisees, dealers and independent contractors; our ability to maintain profitability during adverse economic cycles and unfavorable external events (including war, terrorist acts, natural disasters and epidemic disease); shortages of fuel and increases or volatility in fuel costs; our ability to successfully integrate acquisitions and complete dispositions; our ability to maintain favorable brand recognition; costs and risks associated with litigation; risks related to our indebtedness, including our substantial amount of debt and our ability to incur substantially more debt and increases in interest rates or in our borrowing margins; our ability to meet the financial and other covenants contained in our senior credit facilities, our outstanding unsecured senior notes and certain asset-backed and asset-based funding arrangements; changes in accounting principles, or their application or interpretation, and our ability to make accurate estimates and the assumptions underlying the estimates, which could have an effect on earnings; changes in the existing, or the adoption of new laws, regulations, policies or other activities of governments, agencies and similar organizations where such actions may affect our operations, the cost thereof or applicable tax rates; changes to our senior management team; the effect of tangible and intangible asset impairment charges; the impact of our derivative instruments, which can be affected by fluctuations in interest rates and commodity prices; and our exposure to fluctuations in foreign exchange rates. Additional information concerning these and other factors can be found in our filings and Dollar Thrifty's filings with the Securities and Exchange Commission, including our and Dollar Thrifty's most recent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K.

Hertz therefore cautions you against relying on these forward-looking statements. All forward-looking statements attributable to Hertz or persons acting on its behalf are expressly qualified in their entirety by the foregoing cautionary statements. All such statements speak only as of the date made, and Hertz undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

SOURCE Hertz Global Holdings, Inc.

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Approves Modified Final Order in Hertz Acquisition of Dollar Thrifty

July 11, 2013

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TAGS: Automobiles | Bureau of Competition | Competition | Merger

The Federal Trade Commission has approved a slightly modified version of a settlement requiring Hertz Global Holdings, Inc. to sell a number of assets in conjunction with its $2.3 billion acquisition of Dollar Thrifty Automotive Group, Inc.

Under the settlement with the FTC, Hertz agreed to sell its Advantage Rent A Car business to Financial Services of North America (FSNA), along with the rights to 29 of Dollar Thrifty's airport-based rental locations around the country, creating an independent rental car company with 72 locations. Sixteen of the Dollar Thrifty locations were divested to FSNA shortly after the deal was completed, and most of the rest have been transferred in recent months, including the location at Ronald Reagan Washington National Airport (DCA).

The modified final order approved by the Commission adjusts some of the dates by which Hertz must transfer certain airport rental locations to the acquirer, clarifies some details regarding the possible resale of the divested assets by the acquirer and notification of key staffing changes. In addition, the modified order requires the divestiture of the Dollar Thrifty location at DCA, rather than the Advantage desk as originally contemplated.

The Commission vote approving the modified final order was 3-0-1, with Commissioner Joshua D. Wright not participating. Letters from members of the public who commented on it can be found on the FTC's website. (FTC File No. 121-0120; the staff contacts are Michael R Moiseyev, Bureau of Competition, 202-326-3106, and Daniel P. Ducore, Bureau of Competition, 202-326-2526.)

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Bureau of Competition, Federal Trade Commission, 601 New Jersey Ave., N.W., Room 7117, Washington, DC 20001. To learn more about the Bureau of Competition, read Competition Counts. Like the FTC on Facebook, follow us on Twitter, and subscribe to press releases for the latest FTC news and resources.

The Aftermath

SUBSEQUENT DEVELOPMENTS

The FTC's consent order required Hertz to divest Simply Wheelz LLC dba Advantage Rent A Car to a joint venture between Franchise Services of North America (FNSA), which is the owner of the U-Save brand, and Macquarie Capital, a private equity investor. As part of the divestiture, Simply Wheelz leased 24,000 vehicles from Hertz. The Hertz master lease agreement required Simply Wheelz to bear the residual value risk of the leased fleet.

Rental car companies maintain a new car fleet by selling their cars every six months or so. When Simply Wheelz, as part of ordinary course fleet management activities, began to auction off its older leased fleet vehicles, it immediately began to experience significant losses. As of October 25, 2013, Simply Wheelz had sold 5,295 vehicles for an average loss of $1,633 per vehicle and a total loss of approximately $8,600,000. On October 9, 2013, Simply Wheelz failed to make a required payment to Hertz under the lease agreement. On November 2, 2013, after negotiations between Simply Wheelz and Hertz to restructure the credit arrangement failed to conclude, Hertz gave notice that it was terminating the Master Lease Agreements and seeking the return of Hertz Leased Fleet. Simply Wheelz filed for bankruptcy in order to freeze the lease agreement.

On November 5, 2013, four months after the Commission approved the consent order in final, Advantage filed for bankruptcy.[1] As part of the bankruptcy proceedings, Franchise Services of North America conducted an auction to sell certain of Advantage's assets. The Catalyst Group, Inc. was the winning bidder. The bankruptcy court approved the sale. Under paragraph V of the FTC's consent order, FSNA was also required to the prior approval from the FTC before disposing of any assets it acquired as the original divestiture buyer.

1. *In re* Simply Wheelz d/b/a Advantage Rent-A-Car, No. 13-03332, Chapter 11 (Bankr. S.D. Miss. filed Nov. 5, 2013).

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
Hertz Global Holdings, Inc.	)	
a corporation	)	
	)	**Docket No. C-4376**

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),[1] 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.

[1] 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.[2] FSNA is mindful of the FTC's settlement with Hertz in connection with

[2] 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 [REDACTED] 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.[3]

[3] 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).[4]

- 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

[4] 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.[5]

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

[5] 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 €22 million to €66 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.

Respectfully submitted,

FRANCHISE SERVICES OF NORTH AMERICA, INC.

By Its Attorneys
LAW OFFICES OF CRAIG M. GENO, PLLC

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United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

January 30, 2014

Craig M. Geno, Esquire
Law Offices of Craig M. Geno, PLLC
587 Highland Colony Parkway
Ridgeland, MS 39157

Re: *In the Matter of Hertz Global Holdings, Inc., Docket No. C-4376*

Dear Mr. Geno:

This letter responds to the Petition for Approval for the Sale of Simply Wheelz D/B/A Advantage ("Advantage") filed by Franchise Services of North America ("FSNA") on January 2, 2014 ("Petition"). The Petition requests that the Federal Trade Commission approve, pursuant to the Order in this matter, the sale and assignment of certain Advantage assets to The Catalyst Capital Group Inc. The Petition was placed on the public record for comments until January 22, 2014, and four comments were received.

After consideration of the proposed divestiture as set forth in FSNA's Petition and supplemental documents, as well as other available information, the Commission has determined to approve the proposed sale. In according its approval, the Commission has relied upon the accuracy and completeness of information submitted and representations made in connection with FSNA's Petition. Among the representations relied on is the representation that Catalyst agrees that the assets it acquires from FSNA remain, for three years from the date the Order became final (until July 10, 2016), subject to the prior approval requirements of the Order.

By direction of the Commission, Commissioner Wright not participating.

Donald S. Clark
Secretary

Cc: Karen E. Silverman, Esq.
505 Montgomery Street
Suite 2000
San Francisco, CA 94111-6538

PUBLIC

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
Hertz Global Holdings, Inc. a corporation	)	
	)	
	)	**Docket No. C-4376**

FEDERAL TRADE COMMISSION
2014 APR 10 PM 3:31
DOCUMENT PROCESSING SECTION

PETITION OF FRANCHISE SERVICES OF NORTH AMERICA, INC. FOR PRIOR APPROVAL OF THE SALE OF THE NON-TRANSFERRED LOCATIONS

Pursuant to Section 2.41(f) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph 5 of the Commission's Decision and Order In the Matter of Hertz Global Holdings, Inc., (respectively "Hertz" and the "Order") (Docket No. C-4376), Franchise Services of North America, Inc. ("FSNA") respectfully requests that the Federal Trade Commission (the "Commission") approve the sale and assignment to Hertz and Avis Budget Group ("Avis") 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 assets to be purchased, the "Non-Transferred Locations"). These sales will be pursuant to the terms of bids submitted by Hertz (the "Hertz Bid") and Avis (the "Avis Bid"), which bids both were approved by the United States Bankruptcy Court for the Southern District of Mississippi (the "Bankruptcy Court") in its Order issued on March 31, 2014 (the "Bankruptcy Court Order"). Through a series of Commission-approved transactions, FSNA acquired the Assets To Be

Divested (as defined in the Order),[1] 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 5 of that Order, the Acquirer of Assets To Be Divested, in this case FSNA, must obtain prior approval from the Commission before disposing of any of those assets.

EXECUTIVE SUMMARY

The Commission approved the sale and assignment of most, but not all Advantage Assets to Catalyst (the "Advantage/Catalyst Sale") on January 30, 2014. Catalyst and the Debtor are working expeditiously to consummate the sale transaction to Catalyst and intend to close the Advantage/Catalyst Sale on or around April 30, 2014.[2]

Since that time, the Debtor and Catalyst have worked diligently to find buyers for the 30 locations excluded from the Advantage/Catalyst Sale,[3] and indeed Debtor has obtained Bankruptcy Court approval to dispose of the remaining Assets To Be Divested.[4] Following an Auction for the Non-Transferred Locations, Hertz won 10 Non-Transferred Locations and Avis

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

2 Over the course of the last few months, Catalyst and the Debtor have worked diligently a) to obtain the affirmative consent of each of the airport authorities to the assignment of the Debtor's concession agreements to Catalyst and b) to secure financing and car supplies sufficient to replace the Hertz vehicle fleet in its entirety, as required by its Bankruptcy Court-approved global settlement agreement with Hertz ("the Hertz Settlement Agreement").

3 30 locations were excluded from the Advantage/Catalyst Sale, 22 of which were sold at the Auction. Two (Hartford and Richmond) could not be sold at the Auction because they are Hertz Subconcession Agreements, and under the terms of the Hertz Settlement Agreement, the Debtor cannot market or sell these locations until after the closing of the Advantage/Catalyst Sale, which is presently scheduled for April 30, 2014. To date, the Debtor has had to reject only a single location that it could not market – Oakland. The concession agreement for one location, Colorado Springs, expired by its own terms. The Debtor continues to seek buyers for four other Non-Transferred Locations (Detroit, Milwaukee, Portland, and San Jose), but the Debtor will reject these locations unless it can find a buyer for each location in a timely manner.

4 Catalyst and the Debtor also have made extensive efforts to maintain the best possible relationship with authorities at the Non-Transferred Locations, for the benefit of any eventual buyer of those Locations. In addition to contacting the authorities on a regular basis, Advantage has paid the ongoing MAG and other concession payments at these Locations.

won 12 Non-Transferred Locations. The Bankruptcy Court Order confirms that the Auction process was non-collusive, fair, and open, and has resulted in the best offers for the purchased Non-Transferred Locations.

Debtor now seeks Commission approval for the sale of the Non-Transferred Locations to Avis and Hertz pursuant to their Bankruptcy Court-approved bids. Today, the Non-Transferred Locations are dark/non-operating, and these sales represent the surest and quickest path for turning the lights back on with new branding and investment in the value and deep-value rental car segments. Likewise, the proceeds of the sale will offset Debtor's liabilities and Catalyst's re-fleeting expenses, further stabilizing Advantage as it emerges from bankruptcy. These sales will not harm competition—Hertz and Avis were the only two interested buyers to participate in the Auction and the only firms committed to revitalizing any of the 22 Non-Transferred Locations for which Avis and Hertz submitted the winning bids. For these reasons, FSNA respectfully requests that the Commission promptly approves the sale of the Non-Transferred Locations to Avis and Hertz, as described in more detail below.

Request for Shortened Review

FSNA respectfully requests that the public notice period for this submission be waived or reduced. A shortening or a waiver of the public notice period benefits competition by enabling Hertz and Avis to immediately place value and deep-value brands at 22 Non-Transferred Locations, by allowing Catalyst to monetize these assets before the closing of the Advantage/Catalyst Sale, and by improving the chances that the Debtor will be able to market and sell the remaining six Non-Transferred Locations.

Competition benefits from a waived or shortened public notice period because FSNA and the Debtor have been advised that Hertz and Avis intend to place at each of these locations value and deep-value brands that are not currently operating at those locations. These sales will benefit price-conscious consumers especially, and almost immediately. Moreover, these sales will not reduce competition in any respect in that the Debtor suspended operations at each of these counters in late January 2014. Hertz and Avis are prepared to close within weeks of obtaining Commission approval of the sales. So, the sooner FSNA obtains Commission approval, the sooner the parties can close these divestiture sales. This will permit each of Avis and Hertz to establish value and deep-value brands at these locations sooner, and permit the carrying cost of ongoing MAGS and other concession payments to be offset with income produced from each of those locations.

For Catalyst, the sooner approval can be given, the sooner it can be paid the purchase price generated by the Auction for application against its outstanding DIP loan. Also, the sooner these sales close, the sooner Catalyst can recover cash collateral it posted for expiring performance bonds at several of these airports.

For the Debtor, which still has six locations to market and sell, the sooner the Commission approves these sales to Avis and Hertz, the more likely the Debtor will be able to sell the remaining locations, especially because of the significant time and financial constraints under which the Debtor is operating. With respect to time, the Debtor has only until June 3, 2014 to elect to assume or reject any non-residential real estate lease. Consequently, there is a very real risk that June 3, 2014 will be deemed to be the outer date for closing on these locations.

FSNA is mindful, and grateful that the Commission abbreviated its review of the Advantage/Catalyst Sale. Doing so enabled Catalyst to deal directly and much more quickly and effectively with the airport authorities and fleet manufacturers and financers. The fruits of those dealings are evident now, and the parties will close the Advantage/Catalyst Sale on or before April 30, 2014.

Update on Bankruptcy Sale Process

On January 2, 2014, the Bankruptcy Court entered its order approving the sale of the Advantage Assets to Catalyst. Catalyst identified 40 core locations that it planned to operate in order to build a national and "main airport" presence; Catalyst identified another 30 locations ("Excluded Assets") it could not incorporate into any sustainable business strategy for the Company.[5] Accordingly, on March 7, 2014, the Debtor filed its Sale Motion in which it sought Bankruptcy Court approval to sell the 28 locations that were Excluded Assets through a court-sanctioned competitive bidding process.[6] The Sale Motion referred to these 28 locations as the "Non-Transferred Locations." At the Auction conducted on March 17, 2014, Avis successfully bid to acquire 12 locations, and Hertz successfully bid to acquire 10 locations. On March 31, 2014, the Court entered its Sale Order approving the sale results of the Auction (Docket No. 498). A copy of the Sale Order is attached as **Exhibit 1** to this Application.

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5 Under the Catalyst Asset Purchase Agreement, Catalyst could set which of the Advantage Assets it wanted to purchase. Those assets Catalyst elected to purchase were denominated as the "Purchased Assets," while those assets Catalyst elected not to purchase were denominated as the "Excluded Assets." In general terms, assets related to the 40 core locations are Purchased Assets, while those which relate to the 28 locations are Excluded Assets.

6 As described above in footnote 3 above, Hartford and Richmond, as Hertz Subconcession Agreements, could not be marketed or sold.

Update on Sale to Catalyst

During this time in which the Debtor sought to market and sell the Non-Transferred Locations, the Debtor and Catalyst continued to work together to consummate the sale transaction to Catalyst, to secure additional fleet financing and to resolve outstanding fleet issues.

Fleet Issues: Catalyst and the Debtor simultaneously have been working with fleet lessors and financing sources, so that the Debtor can replace the Hertz vehicle fleet in its entirety, as required by the Hertz Settlement Agreement, and desired by Catalyst. Catalyst's objective, as previously described to the Commission, is to close the Advantage/Catalyst Sale with the fleet issues resolved in a manner that Advantage becomes a competitive concern truly independent of Hertz, as quickly as possible, without disruption to the existing business.

As part of its bid to acquire 10 of the Non-Transferred Locations, Hertz has agreed to further amend the Hertz Settlement Agreement to allow the Debtor much needed time to replace the Hertz fleet, averting a serious business disruption. Without the Hertz Bid, the Debtor would have been obligated to return all remaining Hertz vehicles (approximately 5,200 vehicles) to Hertz by March 31, 2014. Advantage would not have been able to replace the Hertz fleet by that time, and would have had to terminate some operations. Instead, the Settlement Agreement, as amended by the Hertz Bid, allows Catalyst to use the Hertz vehicles through June 2014, subject to a mutually acceptable return schedule.

Since January of this year, the Debtor has been leasing vehicles from a group led by HFC Acceptance LLC. The Debtor recently increased the amount of the HFC leasing arrangement to a total of $100,000,000. Additionally, the Debtor recently filed a Motion with the Bankruptcy

Court to obtain additional $100 million of fleet financing pursuant to an arrangement in which Westlake Services LLC will provide $50 million of fleet financing and Catalyst will provide the other $50 million. These and other efforts will enable Catalyst to replace the Hertz fleet over time before the June 2014 deadline.

Extensive Effort to Dispose of Non-Transferred Locations:
Auction on March 17, 2014

Debtor has sought to market and sell the remaining 28 Non-Transferred Locations through a Bankruptcy Court-approved, competitive sale process. The Debtor's Sale Motion and the Motion to Shorten Time sought an order from the Bankruptcy Court, among other things, to approve the sale and transfer of the Non-Transferred Locations through a bidding process where bids would be due by March 14, 2014, and if there were competing bids, an auction (the "Auction") would be held on March 17, 2014.[7] The Debtor and its advisors contacted many potential acquirers to determine their interest in submitting a bid for one or more Non-Transferred Locations being offered for sale pursuant to the Sale Motion, including but not limited to: Enterprise Rent-A-Car; Sixt Rent A Car; Fox Rent A Car; E-Z Rent A Car; Avis; and Hertz.[8] Although several of these parties expressed initial interest, only Avis and Hertz

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[7] On March 7, 2014, the Debtor filed its Motion of Debtor for Entry of an Order Approving the Sale and Assumption and Assignment, Pursuant to Bankruptcy Code Sections 105(a), 363, 365 and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, of Certain Executory Contracts and Unexpired Leases Free and Clear of All Liens, Claims Encumbrances, and Other Interests, and Granted Related Relief (Docket No. 466) (the "Sale Motion"), as well as its Motion of Debtor for Order Shortening Notice Period and Setting Preliminary and Final Hearing on Motion to Approve the Sale and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases for Remaining Locations (Docket No. 468) (the "Motion to Shorten Time").

[8] Although a bankruptcy sale often involves a lead bid ("Stalking Horse Bid") and a lead bidder (the "Stalking Horse Bidder"), because of several factors, including time constraints, the Debtor dispensed with soliciting a Stalking Horse Bid for this sales process. Instead, the Debtor simply set an offer deadline for offers to be submitted on one or more of the Non-Transferred Locations, and set an Auction in the event competing offers were submitted. The Debtor felt comfortable doing this because the Debtor's management and advisors had received indications of interest from some prospective purchasers prior to the sales process being undertaken.

submitted bids. Under the terms of the sales process, a bidder could submit a bid for any or all locations; there was no minimum number of locations for which a bid had to be submitted.

The Bids of Avis and Hertz; the Auction: Neither Avis nor Hertz submitted a bid for all of the Non-Transferred Locations. Of the 28 Non-Transferred Locations initially offered in the sales process, Avis bid for 17 locations, while Hertz bid for 11 locations.[9] On only five (5) locations did both Hertz and Avis submit bids. Debtor did not receive any bids, either before, during or after the Auction for five (5) of the Non-Transferred Locations.[10]

Awarding of Locations with Single-Buyer Interest: For six (6) of the Non-Transferred Locations (Cleveland, Ft. Walton Beach, Manchester, Norfolk, Pittsburgh, and Seattle), Hertz was the sole bidder. For eleven (11) of the Non-Transferred Locations (Burbank, Charleston, Cincinnati/Northern Kentucky, Des Moines, Chicago, Omaha, La/Ontario, Pensacola, Reno/Tahoe, Louisville, and Tulsa), Avis was the sole bidder.

At the outset of the Auction, the Debtor announced that Avis would be awarded the 11 locations on which it alone bid, while Hertz would be awarded 6 locations for which it alone bid, each at the price set forth in the Avis Bid and the Hertz Bid.[11]

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9 Under the Hertz Settlement Agreement, the Debtor agreed not to market or sell the two Hertz Subconcession Agreements (for the Hartford and Richmond locations) until after the closing of the Debtor's transaction with Catalyst (which is presently scheduled for April 30, 2014).

10 Detroit (DSM), Milwaukee (MKE), Oakland (OAK), Portland (PDX), and San Jose (SJC). Of these five locations, since the Auction, the Bankruptcy Court has authorized the Debtor to reject the concession rights at Oakland.

11 The Richmond Non-Transferred Location (RIC) was one of the 12 locations initially awarded to Avis at the outset of the Auction. Following the Auction, the parties (the Debtor, Catalyst, Avis and Hertz) determined that the Richmond location was in reality a "Hertz Subconcession Agreement" (as defined in the Hertz Settlement Agreement) that the Debtor had agreed would not be sold as a part of the Auction under the terms of the Hertz Settlement Agreement. Accordingly, the parties agreed to withdraw the Richmond location from this sales process, and the Avis Bid was modified to eliminate the Richmond location from the list of Assigned Contracts for Avis and to reduce the Avis Purchase Price by the amount of its bid for the Richmond location.

Bidding Process for Locations with Multiple Buyer-Interest: For the five locations on which Hertz and Avis both submitted bids (Burlington, Hilo, Jacksonville, Providence, and Sarasota), the Debtor consulted with its advisors to determine the minimum bid price and the minimum overbid amount for each of the Non-Transferred Locations. Each of these locations subsequently and through the bankruptcy competitive Auction process was offered separately until it was sold, with Avis and Hertz alternating first bids. At the conclusion of the bidding, Avis had submitted the winning bid for Sarasota, while Hertz won Burlington, Hilo, Jacksonville, and Providence.

Summary of Results of Sales Process and Auction: Thus, through the results of its bid package and its bid at the Auction, Hertz submitted the winning bid for 10 Non-Transferred Locations, while Avis submitted the winning bid for 12 Non-Transferred Locations.

In exchange for the 10 Non-Transferred Locations, Hertz will allow the Debtor and Catalyst continued use of the Hertz vehicles through the end of June 2014 on an agreed-upon turn back schedule. The Debtor and Catalyst believe that continued use of these vehicles will result in approximately $3.5 million in value to the estate. In addition, Hertz will pay $208,000 in cash. Hertz also will reimburse the Debtor and Catalyst for all MAG and lease payments paid by the Debtor from and after February 1, 2014, and will assume such responsibilities going forward for any location it acquires. Finally, Hertz will substitute or replace any bond, letter of credit, or similar credit support provided by Debtor or Catalyst for any purchased locations that are actually acquired by Hertz. The specific description of the purchase price is set forth in the Hertz Term Sheet attached as **Exhibit 2** to this Application.

In exchange for the 12 Non-Transferred Locations it purchased, Avis will pay $6.012 million in cash. Avis also will reimburse the Debtor and Catalyst for all MAG and lease payments paid by the Debtor from and after February 1, 2014, and will assume such responsibilities going forward for any location it acquires. Finally, Avis will substitute or replace any bond, letter of credit, or similar credit support provided by Debtor or Catalyst for any purchased locations that is actually acquired by Avis. The specific description of the purchase price is set forth in the Avis Term Sheet attached as **Exhibit 3** to this Application.

Accordingly, as a result of the auction, should the FTC approve these sales the Debtor and Catalyst will be able to realize over $6 million in cash while also gaining continued use of the Hertz vehicles through the end of June (valued at $3.5 million) in order to effect an efficient and orderly transfer of fleet.

Findings by the Bankruptcy Court in the Sale Order Concerning the Sales Process: In the Sale Order approving the sale of these locations to Hertz and Avis, the Bankruptcy Court found as follows: (1) the bidding procedures were substantively and procedurally fair to all parties; (2) the sale process, Bidding Procedures and Auction were non-collusive, duly noticed, proper in all respects, and afforded a full, fair and reasonable opportunity for any party to make a higher or otherwise better offer to purchase all or any of the Non-Transferred Locations; (3) the Non-Transferred Locations were adequately marketed by the Debtor and its advisors; (4) the consideration provided by Avis and Hertz under the terms of their respective Binding Term Sheets constituted the highest or otherwise best offer and provided fair and reasonable consideration to the Debtor for the Non-Transferred Locations; (5) the Avis Term Sheet and the Hertz Term Sheet presented the best opportunity to maximize and realize the value of the Non-Transferred Locations for the Debtor's estate; and (6) the bidding and related procedures

established by the Sale Motion and Order Shortening Time were complied with in all material respects.

Current Proposal to Sell Locations to Hertz and Avis

The counters are dark at the Non-Transferred Locations today since the Debtor temporarily suspended operations at each of the Non-Transferred Locations at the end of January 2014. After the Commission approves the sale of the 22 locations to Hertz and Avis, the companies will be able to reopen these locations. The Debtor has been advised that each of Hertz and Avis intend to place at each of these locations value and deep-value brands that are not currently operating at those locations. These sales will benefit price-conscious consumers especially, and almost immediately. Moreover, these sales will not reduce competition in any respect, as the counters are dark today and the Auction confirmed no other interested buyers (let alone committed ones).[12] Prompt Commission approval of the sale of the Non-Transferred Locations will help Advantage build a viable national rental car company and simultaneously resuscitate 22 closed locations without any anticompetitive effects. For its part, Debtor and Catalyst will deploy the proceeds of the sales to offset liabilities and fleet financing costs, so that Advantage is healthier and more viable as an overall competitor as it emerges from bankruptcy. Further, the remaining six locations, if they can be quickly sold, will further achieve these goals of the Commission.

In the absence of these transactions, Advantage will receive no benefit from these assets. Given the limited interest in most of these locations (only five of which attracted both Hertz and

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12 To the extent the Commission is concerned, traditional measures of market concentration—such as the Herfindahl-Hirschman Index—do not apply here, where the sales do not transfer any brand, fleet, or ongoing business, and the airports remain in control of when and whether to market the future concessions.

Avis interest, and no location attracted any other rental car company or other buyer interest), it is uncertain whether or when the local airport authorities would re-bid them as car rental counters. Even if they did so at some point in the future, there are no assurances that the outcome of these re-bids would benefit consumers more than a sale to Hertz or Avis. Enterprise Rent-A-Car, Sixt Rent A Car, Fox Rent A Car, E-Z Rent A Car, in addition to Hertz and Avis, were invited to bid for the Non-Transferred Locations, and none did.

Hertz Bid: Hertz submitted the winning bid for 10 of the Non-Transferred Locations. In exchange for the 10 Non-Transferred Locations, Hertz will allow continued use of the Hertz vehicles through the end of June 2014, plus post-1/31/14 MAG and lease payments and $208,000 in cash.

Hertz was the only bidder at six of the Non-Transferred Locations up for auction, including Cleveland, Ft. Walton Beach, Manchester, Norfolk, Pittsburgh, and Seattle. If the Commission does not approve the sale to Hertz, these locations will remain closed in the short term, and perhaps longer.

For the remaining four Non-Transferred Locations—including Burlington, Hilo, Jacksonville, and Providence—the only other bidder was Avis, itself an incumbent at each of the airports. There is no particular reason to assume that competition in the local on-airport market would be better with Avis as the owner of the concession for these counters than with Hertz. The number of firms competing on airport at each location will be the same with Hertz acquiring the concession as it would be with Avis.

In Debtor's view, Hertz will be able to reopen closed locations quickly, and leverage many of the operating costs across a broader platform. As a result, Hertz will be in a prime

position to compete immediately with low price offerings from these new spaces. Debtor further understands that Hertz plans to use these new on-airport counters primarily to operate value brands (Dollar, Thrifty and/or Firefly) that are targeted to price conscious consumers and which are not on-site at this time. (The lone exception occurs at Jacksonville, where Hertz currently intends to reallocate its space in a more efficient manner to improve operations.)

The Hertz acquisition will not harm competition. The Non-Transferred Locations are currently dark and the outstanding reservations have already been transferred to Hertz.

Avis Bid: Avis bid on 16 of the Non-Transferred Locations and won 12. These 12 locations are currently dark. Avis will pay $6.012 million in exchange for the 12 Non-Transferred Locations. In addition, under the terms of the Avis bid, the full Avis payment will be due upon closing on the first location.

Avis was the only bidder on 11 Non-Transferred Locations, which included Burbank, Charleston, Cincinnati/Northern Kentucky, Des Moines, Chicago, Omaha, La/Ontario, Pensacola, Reno/Tahoe, Louisville, and Tulsa. If the Commission does not approve the sale to Avis, these locations will remain closed in the short term, and perhaps longer.

For Sarasota—the remaining Non-Transferred Location for which Avis submitted a winning bid—the only other bidder was Hertz. Again, there is no particular reason to assume that competition in the local on-airport market would be better with Hertz as the owner of the concession for this counter than with Avis. The number of firms competing on airport at each location will be the same with Avis acquiring the concession as it would be with Hertz.

The Avis bid will benefit consumers because as Debtor understands it, Avis intends to operate its value "Payless" brand at the 12 Non-Transferred Locations. Payless is not currently on-airport at any of these 12 locations. At the Sarasota location, Payless is currently off-airport,

but Avis plans to shift the Payless counter from off-airport to on-airport. The new Payless counters will increase consumer choice by offering competitive pricing. Payless competes against many players in value and deep value markets, including independents.

The Avis acquisition will not harm competition. The Non-Transferred Locations are currently dark and the outstanding reservations have already been transferred to Hertz.

Conclusion

The proposed sale of the Non-Transferred Locations to Avis and Hertz is in the best interests of the consuming public and will improve competition in the national rental car market by immediately revitalizing 22 locations. The sales are on fair and reasonable terms, and were obtained after a robust marketing and auction process. Expedited approval will help Advantage build a viable and vigorous national car rental company, resolve its fleet issues, and increase competition at 22 currently closed locations by adding value brand operators. For these reasons, FSNA respectfully requests that the Commission promptly approves the sale of the Non-Transferred Locations to Avis and Hertz.

Respectfully submitted,

Craig Geno
Counsel for FSNA

United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

May 29, 2014

Craig M. Geno, Esquire
Law Offices of Craig M. Geno, PLLC
587 Highland Colony Parkway
Ridgeland, MS 39157

Re: *In the Matter of Hertz Global Holdings, Inc., Docket No. C-4376*

Dear Mr. Geno:

This letter responds to the Petition of Franchise Services Corporation, Inc. for Prior Approval of the Sale of the Non-Transferred Locations filed by Franchise Services of North America ("FSNA") on April 10, 2014 ("Petition"). The Petition requests that the Federal Trade Commission approve, pursuant to the Order in this matter, the sale and assignment of ten closed Advantage locations to Hertz Global Holdings, Inc. and twelve closed Advantage locations to Avis Budget Group. The Petition was placed on the public record for comments until May 19, 2014. No comments were received.

After consideration of the proposed divestiture as set forth in FSNA's Petition and supplemental documents, as well as other available information, the Commission has determined to approve both proposed sales. In according its approval, the Commission has relied upon the accuracy and completeness of information submitted and representations made in connection with FSNA's Petition.

By direction of the Commission, Commissioner Wright and Commissioner McSweeny not participating.

Donald S. Clark
Secretary

cc: Karen E. Silverman, Esquire
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