

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

In the Matter of

**Hertz Global Holdings, Inc.,
a corporation.**

Docket No. C-4376

DECISION AND ORDER

[Redacted Public Version]

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent Hertz has violated the said Acts, and that a Complaint should issue stating its charges in that respect; and having thereupon issued its Complaint and an Order to Maintain Assets; and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and

consideration of public comments; and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34; and having modified the Decision and Order in certain respects, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Hertz is a corporation organized, 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, NJ 07656 1888.
2. Macquarie is a limited liability company that is an indirect subsidiary of Macquarie Group Limited and is organized, 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 125 West 55th Street, New York, NY 10019.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Hertz, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Hertz” means Hertz Global Holdings, Inc., its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; and its joint ventures, subsidiaries (including, but not limited to Advantage), divisions, groups and affiliates controlled by Hertz Global Holdings, Inc. (including, after the Effective Date, DTAG), and the respective directors, officers, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Advantage” means Simply Wheelz LLC, dba Advantage Rent A Car, its divisions, groups, and affiliates controlled by Simply Wheelz LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “DTAG” means Dollar Thrifty Automotive Group, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 5330 E. 31st Street, Tulsa, OK 74135.
- D. “FSNA” means Franchise Services of North America Inc., a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its principal place of business located at 1052 Highland Colony Parkway, Suite 204, Jackson, Mississippi 39157, and includes its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Franchise Services of North America Inc., and the respective directors, officers, employees, agents, attorneys, representatives, successors, and assigns of each.

- E. “FSNA/Macquarie” means, after FSNA is re-domiciled as a Delaware corporation and the consummation of the Adreca/FSNA Merger, FSNA as the owner of an Acquirer of all or a portion of the Assets To Be Divested.
- F. “Macquarie” means MIHI LLC, an indirect subsidiary of Macquarie Group Limited, and includes its directors, officers, employees, agents, representatives, successors, and assigns of each.
- G. “Commission” means the Federal Trade Commission.
- H. “Acquirer” means Adreca (including Advantage after the First Closing) and any other Person that receives the prior approval of the Commission to acquire any or all of the Appendix A Airport Concessions, the Appendix B Airport Concessions, the Additional Assets To Be Divested and, as applicable, the Substitute Airport Concessions pursuant to Paragraphs II or IV of this Order.
- I. “Additional Assets To Be Divested” means Airport Concession Agreements with respect to the locations listed in Confidential Appendix C (“Appendix C Airport Concessions”) to this Order and any assets identified on Confidential Appendix C to this Order, to the extent assigned or allocated by the Airport Authority under the applicable Airport Concession Agreements; *provided, however*, if the Commission designates the confidential Airport X Concession Agreements as a Substitute Airport Concession for the confidential Airport Y Concessions, then the Additional Assets To Be Divested shall no longer include the confidential Airport Y Concessions; *provided further* that Additional Assets to Be Divested shall not include any assets identified on Confidential Appendix C that the Acquirer declines to acquire.
- J. “Adreca” means Adreca Holdings Corp., a Delaware corporation incorporated for the purpose of acquiring Advantage from Respondent Hertz, initially wholly owned by Macquarie and, following the re-domiciliation of FSNA as a Delaware corporation and the consummation of the Adreca/FSNA Merger, a wholly owned subsidiary of FSNA.
- K. “Adreca/FSNA Merger” means the merger of Advantage Company Holdings, Inc., a Delaware corporation wholly owned by FSNA, with and into Adreca, pursuant to the Agreement and Plan of Merger, dated as of July 13, 2012, attached as Confidential Appendix F to this Order.
- L. “Advantage Airport Concessions” means the Appendix A Airport Concessions and any other Airport Concession pursuant to an Airport Concession Agreement entered into by Advantage and any Airport Authority prior to the Effective Date.
- M. “Advantage Assets To Be Divested” means Advantage, including, but not limited to all Appendix A Airport Concessions and all of Advantage’s right, title, and interest in and to the Assets and Assets Associated with the Advantage Car Rental Facilities; *provided, however*, if the Commission designates one or more Substitute Airport Concessions and all of DTAG’s rights, titles, and interests in and to the Assets and Assets Associated with such Substitute Airport Concession(s) as an Advantage Asset To Be Divested, then the

Advantage Assets To Be Divested shall no longer include such Appendix A Airport Concession(s).

- N. “Airport Authority” means the Person with the authority, whatever the basis (i.e. regulatory, statutory, or contractual), to enter into an Airport Concession Agreement.
- O. “Airport Authority Approvals” means any permissions or sanctions issued by any Airport Authority, including, but not limited to, licenses, permits, authorizations, registrations, certifications, certificates of occupancy, and certificates of need that are required for the Operation Of The Airport Concession, including but not limited to approvals that an Acquirer must have to operate as a new operator of an Advantage Airport Concession acquired prior to the Time of Divestiture, an Appendix B Airport Concession, an Appendix C Airport Concession and, as applicable, a Substitute Airport Concession, or to continue to operate an Appendix A Airport Concession.
- P. “Airport Concession” means a Car Rental Facility serving an airport pursuant to an Airport Concession Agreement between a Person and an Airport Authority.
- Q. “Airport Concession Agreement” means the agreement between a Person and an Airport Authority setting forth the terms and conditions for operating an Airport Concession.
- R. “Airport X Concession Agreements” means the Airport Concession Agreements with respect to the airport listed in Confidential Appendix C-1 and any assets identified in Confidential Appendix C-1 to the extent assigned or allocated by the Airport Authority under the applicable Airport Concession Agreements listed in Confidential Appendix C-1 to this Order.
- S. “Airport Y Concessions” means the Additional Assets To Be Divested relating to the airports listed in Confidential Appendix C as Airport Y.
- T. “Appendix A Airport Concessions” means the Advantage Airport Concessions listed in Confidential Appendix A to this Order, all Advantage’s rights, titles, and interests in and to the Advantage Assets, and the Advantage Assets Associated with each.
- U. “Appendix B Airport Concessions” means the DTAG Airport Concessions listed in Confidential Appendix B to this Order, all DTAG’s rights, titles, and interests in and to the DTAG Assets, and the DTAG Assets Associated with each.
- V. “Assets” means all the assets used in the Operation Of A Car Rental Facility, whether real or personal, tangible and intangible, including, but not limited to:
 - 1. furniture;
 - 2. counter space and products;
 - 3. improvements;
 - 4. fixtures;

5. machinery/equipment including, but not limited to, vehicle moving equipment, floor jacks, stanchions, car washes, etc.;
6. IT equipment including, but not limited to, telephones, printers, computers, etc.;
7. vehicles, including, but not limited to, automobiles available for rental and buses to transport customers from an airport terminal to a Car Rental Facility;
8. infant/child seats;
9. signage;
10. telephone numbers;
11. marketing materials;
12. customer lists;
13. GDS Chain Codes;
14. E-toll and tracking devices; and
15. GPS devices.

PROVIDED, HOWEVER, that “Assets” does not include any Excluded Assets.

W. “Assets Associated” means the following assets Relating To the Operation Of A Car Rental Facility:

1. all rights, including, but not limited to Airport Authority Approvals, to operate at an Airport Concession pursuant to an Airport Concession Agreement;
2. leases for the Real Property of the Car Rental Facility, including but not limited to
 - a. ready return parking spaces;
 - b. overflow parking spaces; and
 - c. Quick Turn-Around Areas;
3. consumable or disposable inventory, including, but not limited to, products used to maintain and prepare the applicable Acquirer’s cars being leased from that facility for use as rental cars;
4. all rights, title and interest of Respondent Hertz or DTAG in any tangible property (except for consumable or disposable inventory) that has been on the premises of a Car Rental Facility at any time since January 1, 2012, including, but not limited to, all equipment, furnishings, fixtures, improvements, and appurtenances;

5. books, records, files, correspondence, manuals, computer printouts, databases, and other documents Relating To The Operation Of The Car Rental Facility located on the premises of the Car Rental Facility or in the possession of the Regional Manager responsible for such Car Rental Facility (or copies thereof where Respondent Hertz or DTAG has a legal obligation to maintain the original document), including, but not limited to:
 - a. financial records;
 - b. personnel files;
 - c. maintenance records;
 - d. documents Relating To policies and procedures;
 - e. documents Relating To quality control;
 - f. except, upon a showing to the satisfaction of the Commission, and only to the extent that a document provides, according to its terms or pursuant to the terms of other binding agreements with such applicable Insurer or Supplier, that it cannot be disclosed to third parties even with the permission of Respondent Hertz to make such disclosure:
 - (1) documents Relating To Insurers;
 - (2) documents Relating To Suppliers; and
 - (3) copies of contracts with Insurers and Suppliers;
6. all permits and licenses, to the extent transferable;
7. Intangible Property; and
8. assets that are used in, or necessary for, the Operation Of The Car Rental Facility.

PROVIDED, HOWEVER, that “Assets Associated” does not include Excluded Assets.

- X. “Assets To Be Divested” means the Advantage Assets To Be Divested, the DTAG Assets To Be Divested and the Additional Assets To Be Divested.
- Y. “Boketo LLC” means the Delaware limited liability company wholly owned by Macquarie that is initially the sole shareholder of Adreca and, following the consummation of the Adreca/FSNA Merger, an equity investor in FSNA.
- Z. “Car Rental Facility” or “Car Rental Facilities” means a facility or facilities at which a rental vehicle is picked up and/or returned.
- AA. “Confidential Business Information” means competitively sensitive, proprietary, and all other information that is not in the public domain owned by or pertaining to a Person or a

Person's business, and includes, but is not limited to, all customer lists, price lists, contracts, cost information, marketing methods, patents, technologies, processes, or other trade secrets.

BB. "Divestiture Agreement" and "Divestiture Agreements" means:

1. the "Divestiture Agreements," including but not limited to the Purchase Agreement dated as of July 13, 2012, by and between Adreca and The Hertz Corporation, and all attachments and exhibits (and amendments approved by the Commission), thereto once executed and effective included in Confidential Appendix H to this Order (the "Purchase Agreement"), *provided*, however, that, in the event Adreca is the Acquirer of the Appendix C Airport Concessions, the Divestiture Agreements shall include amendments to the Hertz Senior Note Credit Agreement, the Vehicle Sublease Agreement, the Hawaii Vehicle Lease Agreement and any other exhibits to the Purchase Agreement to remove any impediment to or limitation on Advantage's obtaining financing from a Person other than Respondent Hertz sufficient to acquire additional fleet up to the number of vehicles specified in Confidential Appendix I to this Order, and of additional working capital up to the amount specified in Confidential Appendix I to this Order; and
2. any other agreement pursuant to which Respondent Hertz or a Divestiture Trustee divests all or a portion of the Assets To Be Divested pursuant to this Order and with the prior approval of the Commission.

CC. "Divestiture Trustee" means the Person appointed to act as trustee by the Commission pursuant to Paragraph IV of this Order.

DD. "DTAG Assets To Be Divested" means the Appendix B Airport Concessions, and all of DTAG's rights, titles, and interests in and to the Assets and Assets Associated with the Appendix B Airport Concessions; *provided, however*, if the Commission designates one or more Substitute Airport Concessions as a DTAG Asset To Be Divested, then the DTAG Assets To Be Divested shall no longer include such Appendix B Airport Concession(s).

EE. "DTAG Shares" means the issued and outstanding voting securities of DTAG.

FF. "Effective Date" means the date on which Respondent Hertz acquires, directly or indirectly, a majority of the DTAG Shares.

GG. "Employee" means any individual, whether employed by Advantage or Hertz, and any individual, excluding any DTAG regional manager who has had direct supervisory responsibility for a DTAG Asset To Be Divested or any individual to whom any such regional manager reports, directly or indirectly, and who has been employed part-time or full-time for Advantage Rent A Car or an Appendix B Airport Concession at any time since July 13, 2012, regardless of whether the individual has also worked on the premises of any other Car Rental Facility.

HH. "Excluded Assets" means, unless otherwise specifically included in the Purchase Agreement:

1. all cash, cash equivalents, and short term investments of cash;
2. accounts receivable;
3. income tax refunds and tax deposits due Respondent Hertz or DTAG;
4. unbilled costs and fees arising before an Advantage Car Rental Facility, an Appendix B Airport Concession, an Appendix C Airport Concession and, as applicable, a Substitute Airport Concession is divested to an Acquirer;
5. rights to the names "Hertz" and "DTAG" any variations of those names, and any names, phrases, marks, trade names, trademarks, and other Intangible Property, except to the extent to be directly or indirectly sold and conveyed by Respondent Hertz and purchased and acquired by an Acquirer pursuant to the Divestiture Agreements;
6. insurance policies and all claims thereunder;
7. prepaid items or rebates;
8. minute books, tax returns, and other corporate books and records;
9. any inter-company balances due to or from Respondent Hertz and DTAG or their affiliates;
10. all employee benefits plans;
11. all writings and other items that are protected by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection, except to the extent such information is necessary to the Operation Of The Car Rental Facility;
12. telecommunication systems equipment and applications, and information systems equipment including, but not limited to computer hardware, not physically located at an Car Rental Facility, but shared with such Car Rental Facility through local and/or wide area networking systems;
13. e-mail addresses and telephone numbers of Respondent Hertz's and DTAG's Employees;
14. Software;
15. computer hardware used in the Operation Of The Car Rental Facility that is (a) not located at the Car Rental Facility, and (b) not otherwise to be divested pursuant to a Divestiture Agreement;

16. all Supplier or provider numbers issued to Respondent Hertz or DTAG by a Supplier or Insurer with respect to any Car Rental Facility;
 17. rights under agreements with Insurers and Suppliers that are not assignable even if Respondent Hertz and DTAG approve such assignment;
 18. office equipment and furniture that (a) is not, in the Ordinary Course Of Business, physically located at a Car Rental Facility, (b) is shared with Car Rental Facilities other than as Asset To Be Divested, and (c) is not necessary to the Operation Of The Car Rental Facility constituting the Asset To Be Divested;
 19. Licensed Intangible Property;
 20. strategic planning documents that relate to the Operation Of The Car Rental Facility other than an Asset To Be Divested; and are not located on the premises of the Car Rental Facility; and
 21. any other Assets or Assets Associated not assumed or acquired by the applicable Acquirer pursuant to the applicable Divestiture Agreements.
- II. “Expiration Date” means the date one (1) year from the date the Commission accepts the Consent Agreement for public comment.
- JJ. “First Closing” means the date on which Respondent Hertz divests Advantage to an Acquirer pursuant to applicable Divestiture Agreements.
- KK. “GDS Chain Code” means, for a car rental brand, the unique two letter code used by travel agents, online reservation sites, and large corporations in a worldwide computerized reservation network that enables reservation messages to be identified and delivered to the appropriate car rental brand and to facilitate distribution. The GDS Chain Code for Advantage and Simply Wheelz, respectively, is “AD” and “ZH”.
- LL. Insurer(s)” means any Person(s) that is subject to regulation by a state insurance regulator authority as a result of its payment for losses.
- MM. “Intangible Property” means intangible property Relating To the Operation Of The Car Rental Facility including, but not limited to, intellectual property, Software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, trademarks, trade names, including, but not limited to the Advantage brand name, service marks, logos, and the modifications or improvements to such intangible property..
- NN. “Key Employee” means the following full-time positions within FSNA/Macquarie or its Advantage subsidiary encompassing the functions of: President of Advantage; Chief Operating Officer; Chief Financial Officer; Fleet Manager; Pricing Manager; VP Advantage; VP of Marketing; Director of Airport Relations; Director of Operations Systems (TSD Manager); Financial Planning and Analysis Manager; Insurance Subrogation Manager; Yield/Upsell Manager; and Controller/Advantage

- OO. “Licensed Intangible Property” means intangible property licensed to Respondent Hertz from a third party, including intangible property licensed to Respondent Hertz pursuant to its acquisition of DTAG, Relating To the Operation Of The Car Rental Facility including, but not limited to, intellectual property, Software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intangible property that are licensed to Respondent Hertz. (“Licensed Intangible Property” does not mean modifications and improvements to intangible property that are not licensed to Respondent Hertz).
- PP. “Management Services Agreement” means the Management Services Agreement, dated as of July 13, 2012, pursuant to which FSNA will, until it is re-domiciled as a Delaware corporation and the consummation of the Adreca/FSNA Merger, manage Advantage upon its divestiture by Respondent Hertz to Adreca. (The Management Services Agreement is attached as Confidential Appendix G to this Order.)
- QQ. “Monitor” means the Person appointed to act as monitor, including any substitute monitor(s) by the Commission pursuant to Paragraph III of this Order.
- RR. “Monitor Agreement” means the Monitor Agreement dated as of October 15, 2012, between Hertz and Roger H. Ballou. (The Monitor Agreement is attached as Appendix D to this Order. The Monitor Compensation Agreement is attached as Confidential Appendix D-1 to this Order.)
- SS. “Obtain For The Acquirer All The Necessary Airport Authority Approvals” means that Respondent Hertz has, at no cost to an Acquirer, obtained for such Acquirer all Airport Authority Approvals necessary for such Acquirer to operate an Airport Concession.
- TT. “Operation Of A Car Rental Facility” and “Operation Of The Car Rental Facility” mean all activities Relating To the business of a Car Rental Facility, including, but not limited to:
1. owning or leasing and maintaining a fleet of vehicles at the Car Rental Facility;
 2. attracting customers to rent vehicles at the Car Rental Facility;
 3. providing service related to providing a rental vehicle to a customer at the Car Rental Facility;
 4. maintaining, cleaning, and otherwise servicing the cars rented to customers at the Car Rental Facility;
 5. purchasing supplies and equipment for the Car Rental Facility;
 6. negotiating leases for the premises of the Car Rental Facility;
 7. dealing with Insurers of vehicles offered for rent at the Car Rental Facility; and

8. dealing with Airport Authority Approvals Relating To the Car Rental Facility or that otherwise regulate the Car Rental Facility.
- UU. “Ordinary Course Of Business” means actions taken by any Person in the ordinary course of the normal day-to-day Operation Of The Car Rental Facility that is consistent with past practices of such Person in the Operation Of The Car Rental Facility, including, but not limited to past practice with respect to amount, timing, and frequency.
- VV. “Other Contracts Of Each Car Rental Facility” means all contracts entered into by Advantage Relating To the Operation Of A Car Rental Facility, where such Car Rental Facility is an Asset To Be Divested, including, but not limited to, contracts for goods and services provided to the Car Rental Facility and contracts with Insurers, and all other contracts Relating To the Operation Of A Car Rental Facility, where such Car Rental Facility is an Asset To Be Divested, to be acquired and assumed by Acquirer under the Divestiture Agreements, but does not mean any lease for the Real Property Of The Car Rental Facility or any contract or agreement with an Airport Authority.
- WW. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.
- XX. “Quick Turn-Around Area” means the location on an airport where a rental automobile that has been returned, upon the conclusion of a rental, is washed, cleaned, fueled, and otherwise prepared for the next rental.
- YY. “Real Property Of The Car Rental Facility” means real property on which, or in which, the Car Rental Facility is located, including real property used for ready return parking space, overflow parking spaces, the Quick Turn Around Area, and for other functions Relating To the Operation Of The Car Rental Facility; *provided, however*, that, (i) if an Acquirer is Adreca, the applicable Real Property Of The Car Rental Facility means the real property identified at Schedules 2.9(e) and 5.25(a), (b) and (c) of the Seller Disclosure Letter under the Purchase Agreement and (ii) if the applicable Car Rental Facility is conveyed pursuant to any Additional Assets To Be Divested, the applicable Real Property Of The Car Rental Facility means the real property, if any, conveyed by the applicable Airport Concession Agreements.
- ZZ. “Relating To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.
- AAA. “Software” means executable computer code and the documentation for such computer code, but does not mean data processed by such computer code.
- BBB. “Substitute Airport Concession” means any Airport Concession, and all of DTAG’s rights, titles, and interests in and to the Assets and Assets Associated with such Airport Concession, required to be divested pursuant to Paragraph II.A of this Order in lieu of and as a substitute for any Appendix A Airport Concession, any Appendix B Airport Concession or the Appendix Y Airport Concessions for which, at the Time of Divestiture, Respondent Hertz is unable to receive, as necessary, Airport Authority

Approvals; *provided, however*, that, in the case of the Airport Y Concessions, “Substitute Airport Concession” shall mean the Airport X Concession Agreements.

- CCC. “Supplier” means any Person that has sold or leased to Respondent Hertz or DTAG any goods or services for use in the Operation Of A Car Rental Facility; *provided, however*, that “Supplier” does not mean an employee of Respondent Hertz or DTAG.
- DDD. “Support Payments” means, with respect to any Airport Concession included in the Additional Assets To Be Divested, the payment by Respondent Hertz to the Acquirer thereof of the “Aggregate Support Payments” listed opposite the name of such Airport Concession in Confidential Appendix C or, if the Airport X Concession Agreement, is included in the Additional Assets To Be Divested, Confidential Appendix C-1 to this Order, as follows: one half of such Support Payment at the date of such divestiture and one half of such Support Payment on the first anniversary of the date of such divestiture.
- EEE. “Time Of Divestiture” means the date upon which an Asset To Be Divested is required to be divested to an Acquirer pursuant to this Order.

II.

IT IS FURTHER ORDERED that:

- A. Respondent Hertz shall:
1. no later than the later of fifteen (15) days after the Effective Date or December 12, 2012, divest Advantage and the Advantage Assets To Be Divested to an Acquirer, absolutely, and in good faith, pursuant to and in accordance with the applicable Divestiture Agreements as an on-going business;
 2. divest, absolutely, and in good faith, pursuant to and in accordance with the applicable Divestiture Agreements as on-going businesses the DTAG Assets To Be Divested;
 3. within sixty (60) days after the date Respondent Hertz signed the Agreement Containing Consent Orders in this matter submit for the Commission’s prior approval a proposed Divestiture Agreement, signed by Respondent Hertz and the proposed Acquirer, to divest the Additional Assets To Be Divested;
 4. within six (6) months or, in the case of the Airport Y Concessions, nine (9) months after the Effective Date, divest the Additional Assets To Be Divested to one or more Acquirers, absolutely, and in good faith, pursuant to and in accordance with the applicable Divestiture Agreements and subject to the Commission’s prior approval; and
 5. Make all Support Payments to the Acquirer of the Additional Assets To Be Divested according to the timing provided in Paragraph I.CCC.

PROVIDED, HOWEVER, that Respondent Hertz may, at the Time of Divestiture substitute for any Appendix B Airport Concession and the DTAG Assets and Assets Associated therewith an Advantage Airport Concession and the Advantage Assets and Assets Associated therewith serving that airport or, in the case of any Additional Assets To Be Divested, substitute for the applicable Appendix C Airport Concession, an Airport Concession Agreement sufficient to permit the Acquirer to conduct the Operation Of A Car Rental Facility at the applicable airport location in a manner substantially similar to the on-airport operation of either DTAG brand at such airport prior to the applicable divestiture date.

PROVIDED, HOWEVER, that if, within 180 days after the date the Order becomes final, Respondent Hertz has not acquired a majority of the DTAG Shares, the Commission may, in its discretion, notify Respondent Hertz that it shall divest the Assets To Be Divested only pursuant to the following terms:

- a. Respondent Hertz shall not acquire a majority of the DTAG Shares until it receives the Commission's prior approval of (i) any Acquirer(s), including, but not limited to Adreca, Boketo, Macquarie or FSNA/Macquarie; and (ii) the manner of divestiture, including, but not limited to the Divestiture Agreements (for avoidance of doubt, the provisions of Paragraphs II.A.1 and 2 do not constitute "prior approval" if the foregoing proviso in this Paragraph II.A. becomes applicable); and
- b. Upon obtaining the Commission's prior approval and after acquiring a majority of the DTAG Shares, Respondent Hertz shall divest the Assets To Be Divested at no minimum price, absolutely and in good faith, as an on-going business, no later than ten (10) days from the Effective Date.

Provided, however, that, upon notification and the divestiture of the DTAG Shares pursuant to Paragraph II.C of this Order, the foregoing proviso to Paragraph II.A shall be of no further force or effect.

PROVIDED FURTHER, that, on or before each applicable Time of Divestiture, if Respondent Hertz has demonstrated, to the satisfaction of the Commission after consultation with the Monitor, that Respondent Hertz has not been able to Obtain For The Acquirer All The Necessary Airport Authority Approvals, then for each of the Appendix A Airport Concessions and each of the Appendix B Airport Concessions for which such approval was not obtained, for a period of six (6) months from the date of each applicable Time of Divestiture, the Commission in its sole discretion after consultation with the Monitor may select, consistent with the purpose of this Order as stated at Paragraph II.N, one or more Substitute Airport Concessions for Respondent Hertz to divest to the applicable Acquirer, within ninety (90) days of each such selection and in accordance with Paragraph II.D of this Order, absolutely, and in good faith, pursuant to and in accordance with the Divestiture Agreements as on-going businesses;

PROVIDED FURTHER, that, on or before the applicable Time of Divestiture, if Respondent Hertz has demonstrated, to the satisfaction of the Commission after consultation with the Monitor, that Respondent Hertz has not been able to Obtain For The Acquirer All The Necessary Airport Authority Approvals for the Airport Y Concessions, then for a period of six (6) months from the date of such Time of Divestiture, the Commission in its sole discretion after consultation with the Monitor may designate the Airport X Concession Agreements for Respondent Hertz to divest to the applicable Acquirer, within six (6) months of such designation, absolutely, and in good faith, pursuant to and in accordance with the Divestiture Agreements;

PROVIDED FURTHER, that if, at the time the Commission determines to make this Order final, the Commission notifies Respondent Hertz that Adreca or FSNA/Macquarie or another Acquirer is not an acceptable Acquirer then, after receipt of such written notification: (1) Respondent Hertz shall immediately notify Macquarie and FSNA or such other Acquirer of the notice received from the Commission and shall as soon as practicable, but no later than within five (5) business days, effect the rescission of the applicable Divestiture Agreements; and (2) Respondent Hertz shall, as a condition to Respondent Hertz's acquisition of a majority of the DTAG Shares: within six (6) months of the date Respondent Hertz receives notice of such determination from the Commission, divest the Assets To Be Divested, absolutely and in good faith, at no minimum price, as on-going businesses to an Acquirer or Acquirers that receive the prior approval of the Commission and only in a manner, including pursuant to a Divestiture Agreement, that receives the prior approval of the Commission;

PROVIDED FURTHER that if, at the time the Commission determines to make this Order final, the Commission notifies Respondent Hertz that the manner the divestiture is to be accomplished is not acceptable, the Commission may direct Respondent Hertz or appoint the Divestiture Trustee, to effect such modifications to the manner of divestiture including, but not limited to, entering into additional agreements or arrangements, as the Commission may determine are necessary to satisfy the requirements of this Order;

PROVIDED FURTHER, that during the thirty (30) days immediately following the Effective Date, Respondent Hertz shall not seek to divest the Additional Assets To Be Divested in accordance with Paragraph II.A.3 of this Order to any Acquirer other than Adreca; and

PROVIDED FURTHER, that, in the Divestiture Agreements with respect to any Additional Assets To Be Divested, Respondent Hertz shall agree to make the Support Payments applicable to such Additional Assets To Be Divested.

- B. The Divestiture Agreements are incorporated by reference into this Order and made a part hereof as Confidential Appendix H. Any failure by Respondent Hertz to comply with the Divestiture Agreements shall constitute a failure to comply with the Order. The Divestiture Agreements shall not vary or contradict, or be construed to vary or contradict, the terms of this Order. Nothing in this Order shall reduce, or be construed to reduce, any rights or benefits of Adreca, Boketo, Macquarie and FSNA/Macquarie or any other Acquirer, or any obligations of Respondent Hertz, under the Divestiture Agreements.

- C. If Respondent Hertz has not acquired a majority of the DTAG Shares as of the Expiration Date, or if within 180 days after the date the Order becomes final Respondent Hertz does not have a letter of intent or agreement to purchase DTAG, Respondent Hertz shall:
1. notify the Commission thereof within five (5) days (“Withdrawal Date”); and
 2. shall divest on the New York Stock Exchange absolutely and in good faith all its interest in DTAG Shares within six (6) months from the earlier of the (i) Expiration Date or (ii) Withdrawal Date.
- D. Respondent Hertz shall:
1. place no restrictions on the use by any Acquirer of any of the Assets To Be Divested that would prohibit their use as a Car Rental Facility;
 2. no later than the applicable Time of Divestiture, Obtain For The Acquirer All The Necessary Airport Authority Approvals for each Appendix A Airport Concession, for each Appendix B Airport Concession and for any Appendix C Airport Concessions. If, by the Time of Divestiture, as applicable, Respondent Hertz has demonstrated, to the satisfaction of the Commission after consultation with the Monitor, that Respondent Hertz is not able to Obtain For The Acquirer All The Necessary Airport Authority Approvals for one or more Appendix A Airport Concession, any Appendix B Airport Concession or the Airport Y Concessions, then for a period of six (6) months after each applicable Time Of Divestiture, Respondent Hertz shall Obtain For The Acquirer All The Airport Authority Approvals for each Substitute Airport Concession that the Commission, pursuant to Paragraph II.A of this Order, requires Respondent Hertz to divest; *provided, however,* that, if after six (6) months after each such applicable Time of Divestiture, Respondent Hertz is, to the satisfaction of the Commission after consultation with the Monitor, not able to Obtain For The Acquirer All The Necessary Airport Authority Approvals for one or more Airport Concessions, including any Substitute Airport Concession Respondent Hertz may request the Commission, pursuant to its Rules of Practice, to relieve Respondent Hertz from any further obligation to divest such Airport Concession(s);
 3. at the Time Of Divestiture of each applicable Car Rental Facility assign to the applicable Acquirer all Respondent Hertz’s rights, title, and interest to leases for the Real Property Of The Car Rental Facilities, and shall assist such Acquirer to obtain all approvals necessary for such assignments; *provided, however,* that (1) if such Acquirer obtains all rights, title, and interest to a lease for an Car Rental Facility before the Assets To Be Divested are divested pursuant to Paragraph II.A of this Order, and (2) such Acquirer acknowledges its receipt of such lease as part of the Divestiture Agreements, then Respondent Hertz shall not be required to make the assignments for such Car Rental Facility as required by this Paragraph; and

4. with respect to all Other Contracts Of Each Car Rental Facility, at the applicable Acquirer's option and at the Time Of Divestiture of each Car Rental Facility:
 - a. if such contract can be assigned without third party approval, assign its rights under the contract to such Acquirer; and
 - b. if such contract can be assigned to such Acquirer only with third party approval, assist and cooperate with such Acquirer in obtaining:
 - (1) such third party approval and in assigning the contract to such Acquirer; or
 - (2) a new contract.
- E. Respondent Hertz shall, with regard to each Car Rental Facility to be divested:
 1. no later than the Time Of Divestiture of each such Car Rental Facility, provide to the applicable Acquirer contact information about Insurers and Suppliers for such Car Rental Facility, and
 2. not object to the sharing of Insurer and Supplier contract terms required for the Operation of A Car Rental Facility: (i) if the Insurer or Supplier consents in writing to such disclosure upon a request by the applicable Acquirer, and (ii) if such Acquirer enters into a confidentiality agreement with Respondent Hertz not to disclose the information to any third party.
- F. With regard to the Advantage Employees, from the time Respondent Hertz signs the Consent Agreement and, with regard to the DTAG Employees, from the Effective Date, until sixty (60) days after the Time Of Divestiture of each Car Rental Facility, including, as applicable, each Substitute Airport Concession, Respondent Hertz shall:
 1. if requested by the applicable Acquirer, facilitate interviews between each Employee and such Acquirer, and shall not discourage such Employee from participating in such interviews;
 2. not interfere in employment negotiations between each Employee and the applicable Acquirer;
 3. not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict any Employee from being employed by the applicable Acquirer, and shall not offer any incentive to any such Employee to decline employment with such Acquirer;
 4. cooperate with the applicable Acquirer in effecting transfer of the Employee to the employ of such Acquirer, if that Employee accepts such offer of employment from such Acquirer;

5. eliminate or waive any contractual rights or other restrictions of Respondent Hertz that would otherwise prevent the Employee from being employed by the applicable Acquirer;
 6. eliminate or waive any confidentiality restrictions of Respondent Hertz that would prevent the Employee who accepts employment with the applicable Acquirer from using or transferring to such Acquirer any information Relating To the Operation Of The Car Rental Facility; and
 7. pay, for the benefit of any Employee who accepts employment with the applicable Acquirer, all accrued bonuses, vested pensions and other accrued benefits consistent with the terms of any applicable benefit plans except to the extent assumed by such Acquirer under the Divestiture Agreements.
- G. For a period of two (2) years following the Time Of Divestiture of each Asset To Be Divested, Respondent Hertz shall not directly or indirectly, solicit, induce, or attempt to solicit or induce any Employee who is employed by an Acquirer to terminate his or her employment relationship with such Acquirer, unless that employment relationship has already been terminated by such Acquirer; *provided, however*, Respondent Hertz may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at such Acquirer's Employees; *provided further* that Respondent Hertz may hire employees who apply for employment with Respondent Hertz, as long as such employees were not solicited by Respondent Hertz in violation of this Paragraph; *provided further* that Respondent Hertz may offer employment to any Employee who is employed by an Acquirer in only a part-time capacity, if the employment offered by Respondent Hertz would not, in any way, interfere with the Employee's ability to fulfill his or her employment responsibilities to the applicable Acquirer; *provided further* that Respondent Hertz may offer employment to any Employee who is not a salaried managerial Employee.
- H. For a period of eighteen (18) months following the Time Of Divestiture of each DTAG Airport Concession listed in Confidential Appendix E, Respondent Hertz shall not directly or indirectly attempt to obtain an Airport Concession Agreement for the DTAG brand or brands identified at those airports; *provided, however*, that, with regard to any airport listed in Confidential Appendix E this Paragraph II.H prohibition shall not prohibit Respondent Hertz from (1) seeking to obtain a single Airport Concession Agreement for both the Hertz and one or more DTAG brands at any such airport; (2) if prior to the Time of Divestiture, DTAG operates more than one Airport Concession pursuant to separate Airport Concession Agreements for its brands at that airport, from attempting to obtain one Airport Concession Agreement for such DTAG brand or brands; (3) attempting to obtain an Airport Concession Agreement with an airport that is soliciting bids for a new or modified facility scheduled to open at least eighteen (18) months following the Time Of Divestiture at that airport; or (4) seeking to obtain an Airport Concession Agreement for a DTAG brand or brands, if Respondent Hertz submits thirty (30) days prior written notification to Commission staff that such airport has, since the Order became final, increased the number of available Airport Concessions.

- I. Respondent Hertz shall:
1. not, except to the extent required by applicable law or otherwise by any Airport Authority, disclose Confidential Business Information relating exclusively to any of the Assets To Be Divested to any Person other than the applicable Acquirer;
 2. after the Time Of Divestiture of such Asset To Be Divested:
 - a. not use Confidential Business Information relating exclusively to any of the Assets To Be Divested for any purpose other than complying with the terms of this Order or with any law; and
 - b. destroy all records of Confidential Business Information relating exclusively to any of the Assets To Be Divested, except to the extent that:
 - (1) Respondent Hertz is required by law to retain such information or requires such information for financial or regulatory reporting purposes;
 - (2) Respondent Hertz may require such information to perform its obligations under the Divestiture Agreements; (3) Respondent Hertz may retain tax and employment records in a manner consistent with its general corporate policies; and (4) Respondent Hertz's inside or outside attorneys may keep one copy solely for archival purposes, but may not disclose such copy to the rest of Respondent Hertz.
- J. At the Time Of Divestiture of each Asset To Be Divested, Respondent Hertz shall provide the applicable Acquirer with manuals, instructions, and specifications sufficient for such Acquirer to access and use any information:
1. divested to such Acquirer pursuant to this Order, or
 2. in the possession of such Acquirer, and previously used by Respondent Hertz in the Operation Of The Car Rental Facility.
- K. Respondent Hertz shall convey to the applicable Acquirer the non-exclusive right to use any Licensed Intangible Property (to the extent permitted by the third-party licensor and at such Acquirer's cost and expense), if such right is required for the Operation Of The Car Rental Facility by such Acquirer and if such Acquirer is unable, using commercially reasonable efforts, to obtain equivalent rights from other third parties on commercially reasonable terms and conditions.
- L. Respondent Hertz shall do nothing to prevent or discourage Suppliers that, prior to the Time Of Divestiture of any Car Rental Facility, supplied goods and services for use in such Car Rental Facility from continuing to supply goods and services for use in such Car Rental Facility.
- M. Respondent Hertz shall not terminate the Transition Services Agreement attached to the Purchase Agreement as Exhibit D, or, if Adreca or FSNA/Macquarie are not the applicable Acquirer, any transition services agreement that is a part of the Divestiture Agreements before the end of the term approved by the Commission without:

1. the written agreement of the applicable Acquirer and thirty (30) days prior notice to the Commission; or,
 2. in the case of a proposed unilateral termination or declaration of default by Respondent Hertz due to an alleged breach of an agreement by the applicable Acquirer, sixty (60) days notice of such termination or default; *provided, however,* that such sixty (60) days notice shall be given only after the parties have:
 - a. attempted to settle the dispute between themselves, and
 - b. engaged in arbitration and received an arbitrator's decision, or
 - c. received a final court decision after all appeals.
- N. The purpose of Paragraph II of this Order is to ensure the continuation of the Assets To Be Divested as ongoing viable enterprises engaged in the same business in which such assets were engaged at the time of the announcement of the acquisition by Respondent Hertz of DTAG, to ensure that the Assets To Be Divested are operated independently of, and in competition with, Respondent Hertz, and to remedy the lessening of competition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

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

- D. Respondent Hertz shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondent Hertz's compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
 - a. assuring that Respondent Hertz expeditiously complies with all of its obligations and performs all of its responsibilities, including, but not limited to the responsibility to Obtain For The Acquirer All The Necessary Airport Authority Approvals as required by this Order, the Order to Maintain Assets, and the Divestiture Agreements;
 - b. monitoring any transition services agreements; and
 - c. assuring that Confidential Business Information is not received or used by Respondent Hertz or the applicable Acquirer, except as allowed in this Order and in the Order to Maintain Assets, in this matter.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor shall serve for such time as is necessary to monitor Respondent Hertz's compliance with the provisions of this Order, the Order to Maintain Assets, and the Divestiture Agreements.
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Hertz's personnel, books, documents, records kept in the Ordinary Course Of Business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Hertz's compliance with its obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreements. Respondent Hertz shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Hertz's compliance with this Order, the Order to Maintain Assets, and the Divestiture Agreements.
 5. The Monitor shall serve, without bond or other security, at the expense of Respondent Hertz on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Hertz, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.

6. Respondent Hertz shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
 7. Respondent Hertz shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondent Hertz, and any reports submitted by the applicable Acquirer with respect to the performance of Respondent Hertz's obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreements.
 8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondent Hertz of its obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreements.
 9. Respondent Hertz may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor's duties.
 - F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph III.
 - G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order, the Order to Maintain Assets, and the Divestiture Agreements.
 - H. A Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to Paragraph IV of this Order and may be the same Person appointed as Monitor under the Order to Maintain Assets.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent Hertz has not divested, absolutely and in good faith and with the Commission's prior approval, all of the Assets To Be Divested pursuant to Paragraph II.A. of this Order, the Commission may appoint a Divestiture Trustee to divest any of the Assets To Be Divested that have not been divested pursuant to Paragraph II.A of this Order in a manner that satisfies the requirements of Paragraph II of this Order to one or more Acquirers, which may include negotiations with Airport Authorities regarding Airport Authority Approvals for such Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Hertz shall consent to the appointment of a trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IV shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Hertz to comply with this Order.
- B. If Respondent Hertz has not submitted for the Commission's prior approval a proposed Divestiture Agreement with an Acquirer for the divestiture of the Additional Assets To Be Divested within sixty (60) days of the date Respondent Hertz signed the Agreement Containing Consent Orders, as required by Paragraph II.A.3, or if the Commission denies its approval for any such proposed Divestiture Agreement or Acquirer, the Commission may appoint a Divestiture Trustee (i) to enter into a Divestiture Agreement with an Acquirer for the Additional Assets To Be Divested, and (ii) to divest the Additional Assets To Be Divested to such Acquirer in a manner that satisfies the requirements of Paragraph II of this Order and that receives the prior approval of the Commission.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Hertz, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent Hertz has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after receipt of notice by the staff of the Commission to Respondent Hertz of the identity of any proposed Divestiture Trustee, Respondent Hertz shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent Hertz shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

- E. If a trustee is appointed by the Commission or a court pursuant to this Order, Respondent Hertz shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any of the Assets To Be Divested that have not been divested pursuant to Paragraph II.A of this Order.
 2. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted an application for divestiture approval, or if the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission to review pending applications for divestiture approval and to complete any approved divestitures.
 3. Subject to any demonstrated legally recognized privilege, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the trustee may request. Respondent Hertz shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent Hertz shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Hertz shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court appointed trustee, by the court.
 4. The trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Hertz's absolute and unconditional obligation to divest expeditiously and at no minimum price; *provided, however*, the trustee may obligate Respondent Hertz to make certain payments with regard to airport concession minimum annual guarantees similar to the obligations in the Purchase Agreement and Support Payments (for the Additional Assets To Be Divested); *provided further*, that Respondent Hertz shall not be required to make any other payment pursuant to any such contract or to divest any assets or provide any services other than the Assets To Be Divested; *provided further*, that any such contract shall include provisions that ensure that Respondent Hertz shall not have any continuing liability or financial exposure in the event the Acquirer fails to perform its obligations under any divested Airport Concession Agreement. The divestiture shall be made in the manner and to an Acquirer or Acquirers that receives the prior approval of the Commission, as required by this Order; *provided further*, that if the trustee receives bona fide offers for particular assets from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity for such assets, the trustee shall divest the assets to the acquiring entity selected by Respondent Hertz from among

those approved by the Commission; *provided further* that Respondent Hertz shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. The trustee shall serve, without bond or other security, at the cost and expense of Respondent Hertz, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent Hertz, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for the trustee's services, all remaining monies shall be paid at the direction of Respondent Hertz, and the trustee's power shall be terminated. The compensation of the trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
 6. Respondent Hertz shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
 7. The trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The trustee shall report in writing to Respondent Hertz and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.
 9. Respondent Hertz may require the trustee and each of the trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the trustee from providing any information to the Commission.
- F. If the Commission determines that a trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph IV.
- G. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

- H. The trustee appointed pursuant to this Paragraph may be the same Person appointed as the Monitor pursuant to the relevant provisions of this Order or the Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that if Adreca acquires any or all of the Assets To Be Divested pursuant to Paragraph II.A. of this Order:

- A. Adreca shall, for a period of the shorter of one (1) year from the date this Order becomes final or until the consummation of the Adreca/FSNA Merger, and pursuant to any material failure by FSNA under the Management Services Agreement to meet and sustain the Service Criteria as enumerated therein, notify the Commission: (i) within two (2) days of notifying FSNA of such failure; (ii) thirty (30) days prior to exercising any right to obtain such services from a Person other than FSNA; and (iii) thirty (30) days prior to terminating the Management Services Agreement.
- B. FSNA/Macquarie shall not, for a period of three (3) years from the date this Order becomes final, sell or otherwise convey, directly or indirectly, to any Person without the prior approval of the Commission, any Assets To Be Divested (excluding transactions in the ordinary course of business), including, without limitation, the sale or assignment of any Airport Concession or Airport Concession Agreement; *provided, however*, that this Paragraph V.B shall not apply to the consummation of the Adreca/FSNA Merger or to a sale or conveyance of the Assets To Be Divested through a public placement of shares.
- C. For a period of three (3) years from the date this Order becomes final, or until any sale of all or substantially all of the Assets To Be Divested as provided in this Paragraph V.B., FSNA/Macquarie:
 - 1. Shall maintain and staff all Key Employee positions, and shall provide thirty (30) days prior notice, or such prior notice as is practicable under the circumstance, to the Commission in the event any Key Employee is removed or otherwise ceases his or her employment; and
 - 2. Shall replace any Key Employee within thirty (30) days of the date of such Key Employee's removal or cessation of employment.

VI.

IT IS FURTHER ORDERED that:

- A. Beginning thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondent Hertz has fully complied with Paragraphs II.A through II.K of this Order, Respondent Hertz shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreements. Respondent Hertz shall submit at the same time a copy of these reports to the Monitor.

- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next four (4) years, Respondent Hertz shall submit to the Commission verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order, the Order to Maintain Assets, and the Divestiture Agreements. Respondent Hertz shall submit at the same time a copy of these reports to the Monitor.

VII.

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

- A. Any proposed dissolution of Respondent Hertz;
- B. Any proposed acquisition, merger or consolidation of Respondent Hertz; or
- C. Any other change in Respondent Hertz, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

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

- A. Access, during office hours of Hertz and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondent Hertz related to compliance with this Order, which copying services shall be provided by Respondent Hertz at the request of the authorized representative(s) of the Commission and at the expense of Respondent Hertz; and
- B. Upon five (5) days' notice to Hertz and without restraint or interference from Hertz, to interview officers, directors, or employees of Hertz, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on July 10, 2023.

By the Commission, Commissioner Wright not participating.

Donald S. Clark
Secretary

SEAL
ISSUED: July 10, 2013

CONFIDENTIAL APPENDICES A-I

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