EUROPEAN COMMISSION

Brussels, 6.2.2024
C(2024) 853 final

PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Volkswagen Financial Services AG
Gifhorner Straße 57
38112 Braunschweig
Germany

Pon Bicycle Holding B.V.
Stadionplein 28
1076 CM Amsterdam
The Netherlands

Subject: **Case M.11321 – VWFS / PON BIKE / BMS**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 22 December 2023, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Volkswagen Financial Services AG ('**VWFS**', Germany) and Pon Bicycle Holding B.V. ('**Pon.Bike**', the Netherlands) will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Bike Mobility Services B.V ('**BMS**', the Netherlands).[3] VWFS and Pon.Bike are designated

[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

[2] OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

[3] Publication in the Official Journal of the European Union, OJ C, C/2024/683, 9.1.2024.

hereinafter as the '**Notifying Parties**'. VWFS, Pon.Bike and BMS are designed hereinafter as the '**Parties**'.

1. THE PARTIES

(2) **VWFS** is a wholly-owned subsidiary of Volkswagen AG ('Volkswagen'), which is the ultimate (operating) parent company of the Volkswagen group which is mainly active in the manufacturing of vehicles. Volkswagen is solely controlled by Porsche Automobil Holding SE, which in turn is jointly controlled by members of the Porsche and Piëch families.

(3) VWFS is active in financial services relating to the sale of (new and used) passenger cars, light commercial vehicles, medium and heavy commercial vehicles and buses as well as other mobility services within the Volkswagen Group.

(4) **Pon.Bike** is a subsidiary of Pon Holdings B.V., the ultimate parent company of a privately-held group of companies. Pon.Bike is active in the design, assembly and sale of urban, road and mountain bikes, as well as parts and accessories, and the provision of new mobility services.

(5) VWFS and Pon.Bike are jointly active in the area of bike leasing (via two joint ventures, Volkswagen Pon Financial Services ('**VWPFS**') and Digital Mobility Leasing ('**DML**')). VWFS is also active in this area through activities with other joint venture partners. VWFS is – to a very limited extent – also active in the area of bike manufacturing.

(6) **BMS** is active in the provision of digitized services related to bike leasing. BMS provides its digital platform services, *inter alia*, to employers, freelancers, bike retailers and leasing companies.

2. THE OPERATION

(7) The Transaction is an acquisition of joint control in a full-function joint venture within the meaning of Article 3(4) of the Merger Regulation.

(8) Under the Shareholders Agreement ('SHA') to be executed on the day of closing of the Transaction, each of VWFS and Pon.Bike will appoint one of the two managing directors to BMS's management board. [confidential details on decision-making process and voting rights of VWFS and Pon.Bike] [4]

(9) VWFS and Pon.Bike will each have the possibility of exercising decisive influence over BMS, including the power to block actions which determine the strategic commercial behaviour of BMS (including the business plan and the budget). Moreover, each of VWFS and Pon.Bike will appoint one of BMS's senior managers. VWFS and Pon.Bike will therefore have to reach a common understanding in determining the commercial policy of BMS and are required to cooperate.

(10) BMS already is a full-function company active on the market as a bike leasing platform with its own management and is autonomous in operational respect. After the Transaction, BMS will remain to be fully functional and will thus be a full-

[4] Form CO, section 3.1.2.

function joint venture within the meaning of Article 3(4) of the Merger Regulation. BMS will have a management dedicated to its day-to-day operations and access to sufficient resources including finance, staff, and assets in order to conduct on a lasting basis its business activities.

3. UNION DIMENSION

(11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million. Each of them has an EU-wide turnover in excess of EUR 250 million. Neither VWFS nor Pon.Bike achieves more than two-thirds of their EU-wide turnover within a single Member State.

(12) Therefore, the Transaction has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

4.1. Links between the Parties' activities

(13) The Transaction concerns the bike leasing sector, specifically the leasing of bikes by employers to be used by their employees.

(14) BMS provides digital platform services for bike leasing in Austria, Belgium, Germany, the Netherlands, and Sweden, acting as an intermediary between employers, employees, leasing providers, insurance providers, and bike retailers.

(15) Upstream of the market in which BMS is active, VWFS and Pon.Bike jointly provide bike leasing through joint ventures which act as leasing providers. VWFS also provides bike leasing through another joint venture with a third party.

4.2. Product and geographic market definitions

4.2.1. Product market definition

(16) The Parties consider that the services provided by BMS in the area of bike leasing belong to a single product market distinct from the provision of leasing and insurance services, bike retail and other activities performed by the other participants in the corporate bike leasing sector. The Parties also consider that leasing platforms for bikes and e-bikes are part of the same market.

(17) To date, the Commission has not analysed bike leasing or digital platform services in the area of (bike) leasing in-depth. In previous decisions relating to automotive leasing services, the Commission defined a market for operational leasing services, distinct from a market for financial leasing, that includes the leasing of the vehicle whose ownership remains with the leasing company[5] coupled by the provision of a range of fleet management services, such as maintenance, repair, fuel cards, tyre replacement, and insurance.[6]

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5 In financial leasing ownership ultimately passes to the lessee. See M.8309 - Car Corporation/First rent a car, paragraph 27.

6 M.6436 - Volkswagen Financial Services / D'Ieteren / Volkswagen D'Ieteren Finance JV, paragraphs 15-18 and 25-27; M.6333 – BMW/ING Car Lease, paragraph 15; M.11119 - GCA / STELLANTIS / ALD / LEASEPLAN, paragraphs 18-19.

(18) Automotive leasing has characteristics which apply also to bike leasing, and the processes are largely similar.[7] During the Commission's investigation, a bike leasing platform explained that while the digital system is slightly adapted for each type of vehicle leasing, the backend operation is the same.[8] In a similar vein, a bike leasing service provider indicated that it uses the same core platform for both car and bike leasing services.[9]

(19) Bike leasing is a nascent market sector subject to dynamic evolution. The market for digital bike leasing platforms appears to be separate from that for bike leasing because it is a service that can be provided separately, with platform providers not necessarily being active also upstream in bike leasing themselves. While market participants contacted in the course of the Commission's investigation suggested that various business models exist in respect of these activities that may be vertically integrated, it appears that bike leasing providers do not consider bike leasing platforms as their competitors.[10]

(20) Bike leasing and digital bike leasing platform services could potentially be further subdivided by the type of mobility solutions leased. Market participants indicated, however, that bikes and e-bikes are typically leased together by the same companies. Sometimes they are also leased together with other mobility solutions (such as for example e-scooters), but generally they are offered separately from the leasing of cars.[11]

(21) In the present case, the assessment of the effects of the Transaction focuses on bike leasing services and bike leasing platform services, as this is where the Parties are active. For the purposes of the present decision, it is not necessary to conclude on the exact product market definition, as the notified concentration does not raise any competition concerns under any alternative product market definition. Geographic market definition

(22) The Parties consider that the market for digital platform services for bike leasing is at least national in scope.

(23) The Commission considered in previous decisions that the automotive leasing markets are national in scope because of differences between Member States in: (i) tax and duty regimes (and the way different leasing formulas are treated under these regimes, impacting heavily their fiscal 'attractiveness' for customers), (ii) customer needs and preferences and (iii) different levels of wear in vehicles due to road conditions.[12]

(24) As explained in paragraph (18), bike leasing operates in a similar way as automotive leasing, suggesting that these markets are also national.

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7 Final non-confidential minutes of a call with a bike leasing platform on 13 December 2023, paragraph 5.

8 Final non-confidential minutes of a call with a bike leasing platform on 13 December 2023, paragraph 5.

9 Final non-confidential minutes of a call with a bike leasing service provider on 7 December 2023, paragraph 3.

10 Final non-confidential minutes of a call with a bike leasing service provider on 7 December 2023, paragraph 8.

11 Final non-confidential minutes of a call with a bike leasing service provider on 7 December 2023, paragraph 3; final non-confidential minutes of a call with a bike leasing platform on 13 December 2023, paragraph 4.

12 See M.10638 ALD/Leaseplan where the market was considered national.

(25) In the present case, the assessment of the effects of the Transaction will focus on the national level, as BMS and its competitors offer their services in several countries, in each case at the nationwide level. This is true for both bike leasing and the provision of bike leasing platform services. For the reasons explained below, the Transaction does not raise any competition concerns under this geographic market delineation. A broader geographic market scope would lead to lower market shares than under a national delineation, and will thus not be assessed further.

4.3. Competitive assessment

4.3.1. Legal framework

(26) According to the Non-Horizontal Merger Guidelines,[13] non-coordinated effects may significantly impede effective competition as a result of a vertical merger if such merger gives rise to foreclosure. Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[14] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[15]

(27) The Non-Horizontal Guidelines distinguish between two forms of foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[16]

(28) Foreclosure may also take more subtle forms, such as the degradation of the quality of input supplied. In its assessment, the Commission may consider a series of alternative or complementary possible strategies.[17]

(29) In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger.[18]

(30) In assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs or customers, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition. In practice, these factors are often examined together as they are closely intertwined.[19]

(31) Pursuant to Article 2(2) of the Merger Regulation, a concentration which would not significantly impede effective competition, in the internal market or in a substantial part of it, shall be declared compatible with the internal market. Conversely, pursuant to Article 2(3) of the Merger Regulation, a concentration which would

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13 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07) ('Non-Horizontal Merger Guidelines').

14 Non-Horizontal Merger Guidelines, paragraph 18.

15 Non-Horizontal Merger Guidelines, paragraph 29.

16 Non-Horizontal Merger Guidelines, paragraph 30.

17 Non-Horizontal Merger Guidelines, paragraph 33.

18 Non-Horizontal Merger Guidelines, paragraph 20.

19 Non-Horizontal Merger Guidelines, paragraph 32.

significantly impede effective competition, in the internal market or in a substantial part of it, shall be declared incompatible with the internal market.

4.3.2. The Notifying Parties' views

(32) The Notifying Parties submit that there are no competitive concerns arising from the Transaction with respect to bike leasing platforms and bike leasing in the Netherlands. The Notifying Parties argue that the Transaction will not have a direct impact on the market positions of the Parties, as BMS is already working pre-Transaction exclusively with VWPFS as a leasing bank in the Netherlands.[20]

4.3.3. The Commission's assessment

(33) The Transaction gives rise to vertical relationships in several Member States between the activities of VWFS and Pon.Bike as bike leasing providers (upstream) and the activities of BMS as a bike leasing platform (downstream).

(34) The only vertically affected market arises in the Netherlands, where the combined market share of the Parties exceeds 30%. BMS has a market share of [20-30]% for bike leasing platforms in Belgium and no competition concerns were raised in the course of the Commission's investigation with respect to this (non-affected) vertical relationship.

(35) Pon.Bike and VWFS, through VWPFS, have a market share of [40-50]% (in 2022, in volume) on the market for bike leasing in the Netherlands. BMS has a market share of [40-50]% (in 2022, in value and volume) on the market for bike leasing platform services in the Netherlands. VWFS is present in the Netherlands only through VWPFS as its other joint-venture active in bike leasing is not active in the country.

(36) Already pre-Transaction, in the Netherlands, VWPFS provides its bike leasing services exclusively to BMS.[21] As a result, none of BMS' competitors use VWPFS' services as an input to provide bike leasing platforms. In a similar fashion, in the Netherlands, pre-Transaction, BMS relies exclusively on VWPFS' leasing services. [22] BMS is therefore not a customer of third-party bike leasing providers. As a result, none of VWPFS' competitors rely on BMS as a customer.

(37) Therefore, none of the Parties are cooperating with third parties pre-Transaction to provide their respective services in the Netherlands. It follows that the Parties do not have the ability to engage in input and customer foreclosure post-Transaction.

(38) Moreover, if not vertically integrated, BMS's competitors can partner with several other leasing providers in the Netherlands which are already providing bike leasing services, such as Leaseplan (which holds a 15-20% market share in the Netherlands), Arval or Louwman Group. [23] Likewise, there are various bike leasing platforms which can be used by competing bike leasing providers to offer bike leasing services. These include Hellorider, Leasefiets, Fietslease Holland, Lease Gemak, Driven, Cyclis, Mobilease, FiscFree, Cyclobility, Dynamo Retail Group,

20 Form CO, paras 260-261.
21 Form CO, para. 278.
22 Form CO, para. 286.
23 Form CO, para. 239 and 284.

2-wielerlease, and TSR Lease.[24] The bike leasing platform, as an intermediary service provider, typically handles all of the customer relationship activities. The bike leasing platform is responsible for acquiring new customers, handling customer complaints and it is the sole point of contact for customer service. The leasing provider on the other hand is solely responsible for the financing aspects: it makes sure to have sufficient financing in place, it depreciates the asset, handles the leasing accounting and any governance or regulatory contacts with relevant authorities (e.g. the Dutch National Bank).[25]

(39) The competitors and customers contacted in the course of Commission's investigation did not express any concerns regarding the Transaction as to the Parties' ability to engage in input or customer foreclosure strategies post-Transaction.

(40) The Parties have been working exclusively with one another since January 2020,[26] and it has not produced anticompetitive effects on the market in the Netherlands. Indeed, there are several bike leasing service providers and bike leasing platforms that continue to be active in the Netherlands and also many that have entered the market in the last few years, when the Parties were already cooperating (such as Cyclobility, Cyclis and Mobilease for bike leasing platforms, and Arval, Bochane, and MKB Lease for bike leasing services).[27]

(41) Barriers to entry into bike leasing services and bike leasing platforms are low. Leasing providers that are not offering bike leasing services yet, but are, for example, already offering automotive leasing, can easily extend their service portfolio and enter the market for bike leasing services in the Netherlands – this might be an attractive option to them in particular in light of the fact that the leasing of bikes is a growing market.[28] Most leasing providers offering bike leasing were already active in the leasing of other products before entering bike leasing, such as automotive leasing or leasing of office equipment.[29] There is nothing particular about the financing of bikes that would preclude a financier of any other product from offering its services for bikes as well.[30] For instance, during the market investigation, both KBC Leasing and Friesland Lease explained that they started the leasing operations with car leasing, and later expanded their offer to bike leasing, without substantial changes.[31] In particular, Friesland Lease explained during the market investigation that it '*considers that processes for leasing bikes and cars are largely similar: while the digital system is slightly adapted for each, the backend operation is the same.*'[32]

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24 RFI 2, Question 1.
25 RFI 2, Question 1.
26 RFI 2, Question 2.
27 RFI 1, Question 1.
28 Final non-confidential minutes of a call with a bike leasing platform on 7 December 2023, para. 3; final non-confidential minutes of a call with a bike leasing service provider on 13 December 2023, para. 5.
29 Form CO, para. 369.
30 Form CO, para. 284.
31 Final non-confidential minutes of a call with a bike leasing platform on 7 December 2023, para. 3; final non-confidential minutes of a call with a bike leasing service provider on 13 December 2023, para. 5.
32 Final non-confidential minutes of a call with a bike leasing service provider on 13 December 2023, para. 5.

(42) For the reasons explained above, the Parties do not have the ability to engage in input and customer foreclosures in the Netherlands post-Transaction. In addition, the fact that the Parties are already working exclusively with one another has not produced anticompetitive effects on the market in the Netherlands.

5. CONCLUSION

(43) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President