PUBLIC VERSION

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

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

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-

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 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 s4alf--(titiv)2(e)2(c)6(o)2(m)-1m(le)6(5)6(c 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 prospective purchasers and/or financing sources contacted by Simply Wheelz in its time of need, Catalyst was the only one

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]

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

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. F 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.

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.

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In addition, Catalyst plans to obtain consents for on

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

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,

OF COUNSEL: