

IN THE MATTER OF  
HERTZ CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 9033. Complaint, June 10, 1975 — Decision, Oct. 26, 1976*

Consent order requiring Hertz Corporation, Avis Rent-A-Car System, Inc., and National Car Rental System, Inc., of New York City, Garden City, N.Y., and Minneapolis, Minn., respectively, the three largest passenger car rental companies in the nation, among other things to cease conspiring to, or entering into anti-competitive agreements which tend to fix prices, monopolize on-airport passenger car rental market, and hinder the effective operations of off-airport competitors. Further, the order prohibits respondents from renewing options in current agreements; and from furnishing false information to airport authorities for the purpose of adversely affecting the competitive position of off-airport competitors.

*Appearances*

For the Commission: *Robert W. Rosen, Roger J. Leifer, Thomas F. McNerney, William J. Murphy, III and Charles G. Brown, III.*

For the respondents: *Jerome Shestack, Schnader, Harrison, Segal & Lewis, Philadelphia, Pa., and Irving Kagan, New York City, for Hertz Corporation. Alan S. Ward, Baker, Hostetler, Frost & Towers, Washington, D.C., and David I. Schaffer, Garden City, New York, for Avis Rent-A-Car System, Inc. Michael P. Sullivan, Gray, Plant, Mooty & Anderson, Minneapolis, Minn.; J. Wallace Adair, Howrey & Simon, Washington, D.C.; and Robert W. Bird, Minneapolis, Minn., for National Car Rental System, Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated and are now violating Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint charging as follows:

PARAGRAPH 1. A. Hertz Corporation (Hertz) is a corporation organized and doing business under the laws of the State of Delaware with its principal office at 660 Madison Ave., New York, New York. Hertz, with operating revenues of \$677 million in 1973, is the Nation's largest rent-a-car company, and is a wholly-owned subsidiary of RCA Corporation. In 1973, RCA was the 20th largest industrial corporation in the United States, with \$4.2 billion in sales and \$3.3 billion in assets.

B. Avis Rent-A-Car System, Inc. (Avis) is a corporation organized

and doing business under the laws of the State of Delaware with its principal office at 900 Old Country Road, Garden City, New York. Avis, with operating revenues of \$349 million in 1973, is the Nation's second largest rent-a-car company and until recently was a wholly-owned subsidiary of International Telephone and Telegraph Corporation. In 1973, ITT was the 9th largest industrial corporation in the United States, with \$10.1 billion in sales and \$10.1 billion in assets.

C. National Car Rental System, Inc. (National) is a corporation organized and doing business under the laws of the State of Nevada with its principal office at 5501 Green Valley Dr., Minneapolis, Minnesota. National, with operating revenues of \$140 million in 1973, is the Nation's third largest rent-a-car company and is a wholly-owned subsidiary of Household Finance Corporation. In 1973, Household Finance was the 4th largest finance company in the United States, with \$3 billion in assets.

PAR. 2. In the course and conduct of their business, respondents have purchased and leased passenger automobiles, and have solicited, arranged and contracted to rent passenger automobiles (without drivers) to consumers in interstate commerce. Respondents maintain, and at all times mentioned herein have maintained, a constant and substantial course of trade in said purchasing, leasing, and renting of passenger automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Each of the respondents is in substantial competition with each and all of the other respondents and with other companies in the rental of passenger automobiles in interstate commerce, except to the extent that competition has been hindered, lessened and eliminated as hereinafter set forth.

PAR. 4. Respondents operate their rental businesses through wholly-owned rental stations and through contractually bound franchisees located in towns, cities, and on airports throughout the United States. A substantial and distinct market concerns passenger automobile rentals originating at rental service locations on airport premises throughout the United States (the on-airport auto rental market). The usual method of obtaining rental service locations on airport premises (airport concessions) is through the submission of bids to and negotiation with the respective airports. In acquiring and maintaining airport concessions, respondents negotiate with airports for their respective wholly-owned service locations and their contractually bound franchisee locations. In 1973, respondents' combined sales accounted for approximately 96 percent of the on-airport auto rental market.

PAR. 5. Since at least 1968, respondents, individually and collectively, have maintained and protected a highly concentrated, non-competitive

market structure throughout the United States by employing nationally coordinated programs affecting various local on-airport auto rental markets.

PAR. 6. In maintaining and protecting the aforesaid market structure, respondents, individually and collectively, have been and are engaged in the following acts and practices, among others:

A. Conspiring, combining, following a common course of action, and agreeing among themselves and with and through their franchisees to submit common bid specifications and contractual provisions for airport automobile rental concessions.

B. Conspiring, combining, following a common course of action, and agreeing among themselves and with and through their franchisees, to establish contractual provisions and eligibility criteria in airport automobile rental concession contracts which have the effect of raising barriers to entry into and excluding competitors from on-airport auto rental markets.

C. Conspiring, combining, and agreeing amongst themselves and with and through their franchisees to fix and stabilize prices for automobile rentals at rental service locations.

D. Entering into anticompetitive arrangements with Ford Motor Company, Chrysler Corporation, and General Motors Corporation for advertising subsidies which have the effect of increasing barriers to entry and maintaining and reinforcing the aforesaid non-competitive market structure.

E. Engaging, individually and amongst themselves, in anticompetitive actions, including harassment, which prevent smaller competitors from penetrating the on-airport auto rental markets.

PAR. 7. The aforesaid acts and practices have had, among others, the following effects:

A. American consumers have been forced to pay substantially higher prices for the rental of passenger automobiles than they would have had to pay absent respondents' acts and practices.

B. Respondents have artificially reduced the available supply of automobile rental services in on-airport auto rental markets.

C. Respondents have obtained profits and returns on investment substantially in excess of those they would have obtained in competitively structured on-airport auto rental markets.

D. Actual and potential competition has been lessened, hindered, eliminated, and foreclosed.

E. Barriers to entry into the on-airport auto rental markets have been raised, strengthened, and otherwise increased.

F. Significant entry into the on-airport auto rental markets has been blockaded.

## VIOLATIONS CHARGED

PAR. 8. Respondents have conspired to monopolize on-airport auto rental markets in violation of Section 5 of the Federal Trade Commission Act.

PAR. 9. Respondents, in combination, have acquired, maintained, and exercised monopoly power in various on-airport auto rental markets in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. Respondents have conspired, combined, and agreed amongst themselves and with and through their franchisees to fix and stabilize prices for automobile rentals at rental service locations in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. Respondents, individually and in combination, have erected, maintained and raised barriers to entry into on-airport auto rental markets and have engaged in other unfair methods of competition in the auto rental industry in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

The Commission having issued its complaint on June 10, 1975, charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. §45); and

Respondents and complaint counsel, by joint motion filed March 15, 1976, having moved to have this matter withdrawn from adjudication for the purpose of submitting executed consent agreements; and

The Commission, by order issued March 22, 1976, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

Each of the respondents and counsel supporting the complaint having executed separate agreements containing identical consent orders except for the identity of the respondent and the appendices, which include an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, and waivers as required by the Commission's Rules; and

The Commission having considered the agreements and having provisionally accepted same, and the agreements containing consent orders having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules,

the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent The Hertz Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 660 Madison Ave., New York, New York.

Respondent Avis Rent-A-Car System, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 900 Old Country Road, Garden City, New York.

Respondent National Car Rental System, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its principal office and place of business located at 5501 Green Valley Dr., Minneapolis, Minnesota.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents for this purpose, and the proceeding is in the public interest.

[The decision and order issued by the Commission contained three separate, identical orders as to the respondents. For reasons of economy, only one order is set forth herein.]

#### ORDER

##### I

*It is ordered*, That respondent, [name of respondent], a corporation, its officers, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporate or other device, in connection with the rental of passenger automobiles in the United States do forthwith cease and desist from:

A. Conspiring, combining, or agreeing with any competitor engaged in the passenger automobile rental business to monopolize or to attempt to monopolize the passenger automobile rental business or any relevant submarket thereof in the United States or any relevant submarket thereof.

B. Conspiring, combining, or agreeing with any competitor engaged in the passenger automobile rental business to fix or stabilize prices for passenger automobile rentals.

C. Conspiring, combining, or agreeing with any competitor or with any franchisee or licensee of respondent engaged in the passenger automobile rental business to obtain airport passenger automobile rental bid specifications, or airport passenger automobile rental concession agreements, containing any provision:

1. Requiring passenger automobile rental concessionaires to have their own national credit cards;
  2. Requiring passenger automobile rental concessionaires to provide a national reservation system;
  3. Requiring passenger automobile rental concessionaires to operate passenger automobile rental concessions in a minimum number of airports;
  4. Requiring passenger automobile rental concessionaires to provide one-way passenger automobile rental service;
  5. Requiring passenger automobile rental concessionaires to have a minimum number of years of experience in the passenger automobile rental business;
  6. Requiring passenger automobile rental concessionaires to operate a passenger automobile rental business national in scope;
  7. Requiring passenger automobile rental concessionaires to make a minimum investment as a condition precedent to obtaining or retaining a passenger automobile rental concession;
  8. Requiring passenger automobile rental concessionaires to pay minimum guarantees;
  9. Limiting the number of on-airport passenger automobile rental concessionaires; or
  10. Having as its purpose or effect the foreclosure of competitors of respondent in the passenger automobile rental business from entering into on-airport passenger automobile rental concession agreements.
- D. Conspiring, combining, or agreeing with any competitor or with any franchisee or licensee of respondent engaged in the passenger automobile rental business to obtain airport passenger automobile rental bid specifications or airport passenger automobile rental concession agreements containing any provision the purpose or effect of which is to prohibit a competitor engaged in the passenger automobile rental business at a location off airport premises from:
1. Utilizing any airport public address system for the purpose of contacting persons with passenger automobile rental reservations;
  2. Utilizing, for the pick-up of persons with passenger automobile rental reservations and the discharge of passenger automobile rental customers, any public pick-up or discharge areas on airport premises;
  3. Advertising on-airport premises through signs and literature;
  4. Entering airport premises to meet and pick up persons with passenger automobile rental reservations, or to return and discharge passenger automobile rental customers; or
  5. Installing direct line telephones within airport terminals.

## II

*It is further ordered*, That respondent shall forthwith cease and desist from individually making any recommendation to any airport authority (an entity responsible for awarding or administering airport passenger automobile rental concession agreements) in the United States for the primary purpose of foreclosing competitors of respondent in the passenger automobile rental business from entering into on-airport passenger automobile rental concession agreements.

## III

A. *It is further ordered*, That respondent shall forthwith cease and desist from individually recommending the inclusion in airport passenger automobile rental bid specifications or in airport passenger automobile rental concession agreements in the United States of any provision:

1. Requiring passenger automobile rental concessionaires to have their own national credit cards;
2. Requiring passenger automobile rental concessionaires to provide a national reservation system;
3. Requiring passenger automobile rental concessionaires to operate passenger automobile rental concessions in a minimum number of airports;
4. Requiring passenger automobile rental concessionaires to provide one-way passenger automobile rental service;
5. Requiring passenger automobile rental concessionaires to have a minimum number of years of experience in the passenger automobile rental business;
6. Requiring passenger automobile rental concessionaires to operate a passenger automobile rental business national in scope;
7. Requiring passenger automobile rental concessionaires entering into concession agreements at an airport at the same time respondent enters into a concession agreement at said airport to maintain operating facilities not reasonably proportionate to the operating facilities of respondent, as measured by the reasonably anticipated business of said concessionaires during the concession term relative to the reasonably anticipated business of respondent during said term;
8. Requiring passenger automobile rental concessionaires entering into concession agreements at an airport at the same time respondent enters into a concession agreement at said airport to pay minimum concession fees not reasonably proportionate to minimum concession fees to be paid by respondent as measured by the reasonably anticipated business of said concessionaires during the concession term relative

to the reasonably anticipated business of respondent during said term;  
or

9. Requiring passenger automobile rental concessionaires coming on airport during the term of respondent's concession agreement to pay, for the first two (2) years they do business on that airport, a minimum guarantee in excess of whichever is the lower of the lowest minimum guarantee or the lowest concession fees actually paid by the three respondents in this matter, or any of them, in the twelve (12) months next prior to the entry of said new concessionaires.

B. *It is further ordered*, That, for a period of five (5) years from the effective date of this order, respondent shall forthwith cease and desist from individually recommending the inclusion in airport passenger automobile rental bid specifications or in airport passenger automobile rental concession agreements in the United States of any provision:

1. Limiting to a specific number the on-airport passenger automobile rental concessions to be awarded, except that respondent shall not be precluded from inquiring as to the number of on-airport passenger automobile rental concessions to be awarded during the term of any concession agreement, and seeking and obtaining an agreement from an airport authority that said concessions to be awarded shall not exceed such number;

2. Prohibiting off-airport passenger automobile rental businesses from utilizing any airport public address system for the purpose of contacting persons with passenger automobile rental reservations, except that to the extent that such use shall be available to any off-airport passenger automobile rental business, respondent may seek and obtain an agreement that it will be afforded equal treatment under similar terms;

3. Prohibiting off-airport passenger automobile rental businesses from utilizing, for the pick-up of persons with passenger automobile rental reservations and the discharge of passenger automobile rental customers, pick-up areas on airport premises available to other off-airport commercial entities or to on-airport concessionaires other than passenger automobile rental businesses for the purpose of customer pick-up and discharge, except that to the extent that such use shall be available to any off-airport passenger automobile rental business, respondent may seek and obtain an agreement that it will be afforded equal treatment under similar terms; or

4. Prohibiting off-airport passenger automobile rental businesses from advertising on airport premises through signs and literature, except that to the extent that such advertising may be permitted by an airport authority, respondent may seek and obtain an agreement that it will be afforded equal treatment under similar terms.

C. *It is further ordered*, That respondent shall forthwith cease and desist from enforcing or insisting on the enforcement of any provision in an existing airport passenger automobile rental concession agreement that requires other airport passenger automobile rental concessionaires to meet any of the criteria set forth in subparts 1 through 6 of paragraph III A of this order.

## IV

*It is further ordered*, That respondent shall forthwith cease and desist from knowingly providing false information to any airport authority for the purpose of: (1) foreclosing competitors of respondent from entering into on-airport passenger automobile rental concession agreements; or (2) effecting or accomplishing any of the activities enumerated in paragraph III B hereinabove.

## V

*It is further ordered*, That, at each airport in the United States where respondent has an existing on-airport passenger automobile rental concession agreement containing a renewal option, respondent is prohibited from exercising said renewal option, except for those airports listed under respondent's name in Appendix A hereto, at which airports respondent will have, as of the date respondent must exercise said renewal option, a wholly or partially unamortized capital investment in facilities used in connection with said airport concession; *provided, however*, that nothing herein shall be construed to prohibit respondent from negotiating for, or entering into, new on-airport passenger automobile rental concession agreements in such situations where respondent is prohibited from exercising said renewal options.

## VI

*It is further ordered*, That respondent, except as otherwise prohibited by this order, may: (1) communicate, negotiate, or contract with an airport authority with respect to any matter affecting duties, obligations, rights or privileges of respondent as a passenger automobile rental concessionaire, notwithstanding any incidental effect on other competitors of respondent in the passenger automobile rental business, and with respect to fair and equitable "most favored nations" clauses; and (2) communicate with, agree with, and otherwise do business with its licensees or franchisees.

## VII

*It is further ordered*, That respondent shall furnish a copy of this

order together with a letter in the form attached hereto as Appendix B to each airport at which respondent has an existing on-airport concession agreement within sixty (60) days of the effective date of this order.

## VIII

*It is further ordered,* That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or any other change in the corporation which may affect compliance obligations arising out of this order.

## IX

*It is further ordered,* That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order, and that respondent shall thereafter furnish such other written reports and information relating to this order as may be requested in writing.

Commission Dole did not participate by reason of absence.

## APPENDIX A

*The Hertz Corporation*

Greenville - Spartanburg Airport, Greenville, South Carolina  
Kanawha County Airport, Charleston, West Virginia  
Tallahassee Municipal Airport, Tallahassee, Florida  
Portland International Airport, Portland, Maine  
Municipal Airport, Mobile, Alabama

*Avis Rent-A-Car System, Inc.*

Eglin Field Airport, Fort Walton Beach, Florida  
Toledo Express Airport, Toledo, Ohio  
Reno International Airport, Reno, Nevada  
Monterey Peninsula Airport, Monterey, California  
Asheville Municipal Airport, Asheville, North Carolina  
Portland International Airport, Portland, Maine

*National Car Rental System, Inc.*

Eglin Field Airport, Fort Walton Beach, Florida  
Toledo Express Airport, Toledo, Ohio  
Bates Field—Mobile Municipal Airport, Mobile, Alabama

Reno International Airport, Reno, Nevada  
Monterey Peninsula Airport, Monterey, California

## APPENDIX B

[Airport Authority]

Enclosed is a copy of a Consent Order entered into by [name of respondent] In the Matter of Hertz Corporation, et al., Docket No. 9033 before the Federal Trade Commission.

You are hereby notified that [name of respondent] does not advocate or insist upon the inclusion, in airport passenger automobile rental bid specifications or airport passenger automobile rental concession agreements, of any provision requiring on-airport passenger automobile rental concessionaires: (1) to have their own national credit cards; (2) to provide a national reservation system; (3) to operate passenger automobile rental concessions in a minimum number of airports; (4) to provide one-way passenger automobile rental service; or (5) to have a minimum number of years of experience in the passenger automobile rental business; or of any provision the primary purpose of which is to foreclose competitors of [name of respondent] in the passenger automobile rental business from entering into on-airport passenger automobile rental concession agreements.

[Name of respondent] does, however, insist upon its rights, in the course of bidding or negotiating for airport passenger automobile rental concessions, to seek and obtain adequate space and facilities for its own operations, and to seek and obtain a commitment from an airport: (1) as to the number of on-airport passenger automobile rental concessions said airport intends to grant; (2) as to said airport's policies with respect to the terms and conditions pursuant to which said airport (a) has granted or will grant on-airport passenger automobile rental concessions to others, or (b) has permitted or will permit off-airport passenger automobile rental businesses to have access to airport facilities and passengers; and (3) as to said airport's policy with respect to buyouts by the airport or by another concessionaire of [name of respondent]'s unamortized facilities at the termination of its concession agreement.

Complaint

88 F.T.C.

## IN THE MATTER OF

FURNITURE CORPORATION OF AMERICA, T/A  
FURNITURE LEASING OF AMERICA, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-2849. Complaint, Oct. 26, 1976 — Decision, Oct. 26, 1976*

Consent order requiring a Miami, Fla., furniture leasing company, among other things to cease failing to maintain adequate records; and to follow prescribed procedures to locate and make proper refunds to past and present eligible customers.

*Appearances*

For the Commission: *Francis X. McDonough, Jr.*

For the respondent: *Pro se.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Furniture Corporation of America, a corporation, doing business as Furniture Leasing of America, Inc., hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 2400 N.W. 72nd Ave., Miami, Florida.

PAR. 2. Respondent Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., is now and for some time past, has been engaged in the advertising for lease and the leasing of furniture and related accessories, which when leased are transported to consumers located in various States of the United States. Thus, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said furniture and related accessories in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

Respondent has established and operates a number of branches for