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***Case No COMP/M.6136 -  
JCI/ AUTOMOTIVE  
BUSINESS OF KEIPER  
RECARO GROUP***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 16/06/2011

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EUROPEAN COMMISSION

Brussels, 16.06.2011  
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the Notifying Party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6136 - JCI/ Automotive Business of Keiper Recaro Group  
Notification of 6 May 2011 pursuant to Article 4 of Council Regulation (EC)  
No 139/2004<sup>1</sup>**

1. On 6 May 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>2</sup> by which the undertaking Johnson Controls, Inc. ("JCI", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the Automotive Business of the Keiper Recaro Group ("Keiper", Germany) by way of purchase of shares.

**I. THE PARTIES**

2. **JCI** is active in the areas of automotive systems, facility management and control systems and services. The automotive business of JCI includes the assembly of complete car seats and the production of metal structures as well as foam, textile covers, components and

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<sup>1</sup> 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.

<sup>2</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

mechanisms for car seats. JCI recently acquired CRH<sup>3</sup> which is also active in automotive seat markets. Therefore, any reference to JCI in the following always includes CRH.

3. **Keiper** manufactures metal structures for car seats and seat mechanisms such as recliners or adjusters. It also supplies complete seats, although these are primarily special seats for the independent aftermarket under the brand name "Recaro"; its seat sales to car manufacturers (OEMs) are negligible.

## II. CONCENTRATION

4. JCI intends to purchase the major part of Keiper's automotive business<sup>4</sup>. Its non-automotive business including the aircraft seating business will be carved out and the automotive business restructured before JCI acquires sole control of the remaining group of automotive Keiper companies. The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of Regulation 139/2004.

## III. EU DIMENSION

5. The aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million<sup>5</sup> (JCI: EUR 26 157 million, Keiper: EUR [...]million). Each of them has a EU-wide turnover in excess of EUR 250 million (JCI: EUR [...] million, Keiper: EUR [...] million) and only Keiper achieves more than two-thirds of its aggregate EU-wide turnover in Germany<sup>6</sup>. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

## IV. COMPETITIVE ASSESSMENT

6. JCI's and Keiper's activities overlap in a number of markets for products that are exclusively supplied to car manufacturers ("OEM" markets). This concerns the complete car seat assemblies ("tier 1"), the assembly of metal structures for car seats ("tier 2") and the manufacturing of recliners, length, height and tilt adjusters ("tier 3"). The latter are mechanisms that are incorporated in the seat structures to move the seats in different directions.
7. JCI is the leading tier 1 supplier of complete car seats and also among the leading tier 2 suppliers of metal structures (or frames) for car seats ("seat structures") in Europe. Through its previous acquisition of CRH, JCI acquired not only another tier 1 and 2 assembler, but also a significant tier 3 supplier of certain mechanisms such as adjusters. The intended acquisition of Keiper, which is also a major tier 3 supplier of such mechanisms, in particular of recliners, will reinforce JCI's position as a vertically

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<sup>3</sup> *COMP/M.6045 JCI/CRH*, decision of 14 January 2011.

<sup>4</sup> Keiper's automotive business will not include its Latin America business and its subsidiaries [...] that will be carved out before the sale to JCI.

<sup>5</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p 1).

<sup>6</sup> JCI's turnover of the previous financial year ending on 30 September 2010 plus the 2010 turnover of Michel Thierry Group and CRH acquired afterwards.

integrated company across all tier 1 - 3 levels. The transaction will therefore also result in vertical effects.

8. The markets and/or market segments for complete car seats, seat structures, recliners, length adjusters, height and tilt adjusters and latches for automotive seating applications are horizontally affected by the notified transaction.

#### **IV.1. RELEVANT MARKETS**

##### **IV.1.1. RELEVANT PRODUCT MARKETS**

9. The products in question are supplied to the original equipment manufacturers ("OEM") with the exception of Keiper's speciality seats (i.e. seats for special usage such as sports/racing car seats or seats for handicapped passengers) that it sells under the brand name *Recaro* to the independent aftermarket ("IAM"). JCI, however, is not active in the IAM so the transaction does not result in any overlap in that regard. Therefore, the following only concerns the OEM markets.

##### **IV.1.1.1. Tier 1: Complete car seat assembly**

10. Whereas JCI is a leading supplier of OEM standard car seats, Keiper has only minor activities as an OEM car seat manufacturer.<sup>7</sup> Car seats are specifically designed for a particular light vehicle ("car") model or a platform comprising several models. This just-in-time (JIT) production of complete seats is to a large extent an assembly activity: the manufacturer assembles the different components - including the three main elements, the seat structure with its mechanisms, the foam cushion and the seat covers - close to the car factory.
11. The Commission in earlier decisions<sup>8</sup> has left open whether the complete seat or individual components constitute the relevant product market(s). In the two recent decisions concerning JCI<sup>9</sup>, the Commission considered the assembly of complete seats as a potential relevant market on its own but left the exact product market definition open.
12. In the present case, the exact market definition can be left open since serious doubts as to the compatibility of the proposed transaction with the internal market and the EEA Agreement do not arise under any alternative market definition.

##### **IV.1.1.2. Tier 2: Seat structures for car seats**

13. Both JCI and Keiper manufacture only seat structures for car seats<sup>10</sup>. The following assessment of seat structures is therefore based on seat structures for cars only.

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<sup>7</sup> Both parties only manufacture automotive seats for light vehicles (cars); Keiper, however, intends to start seat manufacturing for heavy vehicles by [...].

<sup>8</sup> *IV/M.666 – Johnson Controls/Roth Frères; IV/M. 937 – Lear/Keiper; IV/M.1093 - Ecia/Bertrand Faure..*

<sup>9</sup> *COMP/M.5930 JCI/Michel Thierry Group*, decision of 22 November 2010; *COMP/M.6045 JCI/CRH*, decision of 14 January 2011.

<sup>10</sup> According to the parties, Keiper will produce the seat structures for its own heavy vehicle seat assembly which it intends to start by [...].

14. A seat structure is the core element of a car seat into which mechanisms such as recliners and adjusters are assembled. Tier 1 suppliers (specialised assemblers of complete seats or vertically integrated seat and seat structure manufacturers or the car manufacturers themselves) then add foam and cover the structure to assemble the complete seat.
15. A seat structure consists of the cushion assembly (the structure for the seating area into which - for front seats - the length, height and tilt adjusters are then integrated), and the backrest assembly (the structure for the backrest into which - for front seats - the recliner is integrated). There are standard front and rear seat structures as well as specialised seat structures such as front seat structures with integrated seat belt mechanisms ("ISS") or very large mechanisms ("VLMs") and third row seat structures for larger cars such as family vans, both of which broadly use similar components so that the VLM/third row structure manufacturers often provide both.
16. Seat structure/seat structure part suppliers are either selected by the car manufacturers in bidding competitions or by the tier 1 supplier of complete seats that are selected by the car manufacturers. Due to vertical integration, the major players are both tier 1 and 2 suppliers.
17. With the exception of ISS which only JCI produces, both parties manufacture/assemble all of these structures and structure parts, i.e. front, rear and VLM/third row seat structures as well as front and rear seat cushion and backrest assemblies. These products are clearly not substitutable from the demand side perspective.
18. As to supply side substitutability, there are indications that switching production from one to the other structure type is difficult, at least between front, rear and VLMs/third row seat structures but even between cushion and backrest assemblies in view of the different technical requirements and of, at least partly, specialised suppliers. Consequently, the clear majority of the seat structure manufacturers replying to the Commission's market investigation in this case estimated that switching production from one to any of the other segments – and between the sub-segments – would take a year or longer (with most of them replying that the switching phase would take two or more years).
19. Considering, however, that seats and often also seat structure manufacturers are selected by the car manufacturers in bidding competitions that take place well ahead of the actual production process (mostly 2-4 years) for contracts that often last 6-7 years or even longer, a manufacturer of a certain structure type or parts may well be able to switch in a timely manner in order to compete for a new model or platform-related seat structure in response to small and permanent price changes. Examples also show that manufacturers producing, first, only one type of seat structure later also enter other segments.
20. However, as in the recent Commission decision concerning seat structures, *COMP/M.6045 - JCI/CRH*<sup>11</sup>, the exact product market definition can also be left open in the present case since the transaction does not raise serious doubts as its compatibility with the internal market and the EEA Agreement on the basis of any of the possible product market definitions.

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<sup>11</sup> *op. cit.*

### **IV.1.1.3. Tier 3: Mechanisms for car seats**

#### **Recliners**

21. Recliners are used for adjusting the inclination of a seat's back rest. The Commission examined recliners for car seats in *JCI/CRH*, but left the market definition open. Recliners are mainly used in front seats, but they are also used in VLMs/3rd row seats. There are three main types of recliners used in front seats: manual rotary (continuous), manual lever (discontinuous) and power rotary recliners. Recliners are used in both cars and trucks with cars accounting for by far the largest proportion of demand.

#### *Type of recliner*

22. According to the notifying party, the only relevant distinction between recliners may be the type of recliner due to the limited demand side substitutability with other products and the differences in know-how needed to develop the products.
23. The market investigation confirmed that it would not be easy to switch from using one type of recliner to using another type of recliner in a seat in the same car model. Such substitution would take considerable time and would incur considerable costs due to the need for redesign, testing and validation. As for the possibilities of switching on the supply side, the evidence from the market investigation is insufficient overall to establish supply-side substitutability. In particular, the market investigation indicated that the production of different types of recliners requires different R&D capabilities and production know-how. This notwithstanding, for a supplier who already has the capabilities to supply all types of recliners, switching between different recliners does not appear to be difficult.
24. Whereas there appear to be significant differences among the main types of recliners, the market investigation confirmed that a supplier of one type can most likely supply any car model with a seat based on that particular type. In particular, the market investigation confirmed the parties' argument that the core product is generally the same for each type of recliner – i.e. does not vary significantly depending on the car model.

#### *Type of vehicle*

25. The parties currently overlap only in the supply of recliners for light vehicles. Only Keiper supplies recliners for heavy vehicles. In the parties' view, there are no significant differences between recliners for cars and trucks and competitors offering truck recliners are generally significant suppliers of car recliners as well.
26. The majority view of the market investigation supports the parties' view with respect to the absence of significant differences between recliners used in light and in heavy vehicles. This notwithstanding, customers accounting for a significant part of recliners for light vehicles would not consider sourcing recliners from a supplier of recliners only for heavy vehicles. A significant part of suppliers of recliners for heavy vehicles on the other hand confirmed that they could easily use their production assets currently used for supplying heavy vehicles to produce recliners for light vehicles. It should, however, be noted that these suppliers generally supply both types. The market investigation also indicated that the share of recliners for heavy vehicles of the overall recliner demand is not likely to exceed 10% and that a large share of this demand comes from suppliers of both types of recliners. Whether heavy vehicle recliners are included in the market for

recliners used in light vehicles does not therefore have a significant bearing on the competitive assessment in the present case.

27. The question whether recliners used in heavy vehicles belong to the same market as recliners used in light vehicles does not have to be decided in the present case as the transaction does not raise competition concerns as to its compatibility with the internal market and the EEA Agreement even on the narrower market of recliners used in light vehicles only.

*Type of seat*

28. VLM/3rd row seat structures include a manual recliner-type mechanism that allows the adjustment of the position of the seat back and the folding of the seat. According to the parties, recliners made for use in VLMs/3rd row seat structures must resist significantly higher loads than standard (front seat) recliners and thus have higher strength specifications. For this reason, where standard (front seat) recliners are used in VLMs, their lack of strength must be compensated by a special design of the entire seat system and its components.
29. To the best of the parties' knowledge, only Keiper and Faurecia use their standard (lever) recliners in their VLM/3rd row seat structures. For example, Keiper integrates its standard Lever 2000® recliner into the VLMs that it manufactures for the [...]. JCI on the other hand uses special VLM recliner mechanisms. The parties submitted pictures of their recliners used in VLMs to demonstrate the difference:

*Keiper's manual lever recliner*

*used in VLMs*

Lever 2000® Disk



*Special VLM recliner of JCI*



30. According to the parties, the vast majority of recliners used in VLMs/3rd row structures are not sold as a separate product but form an integral part of the VLM/3rd row seat structure. To the best of the parties' knowledge, only Keiper's Fold 2000®, a lever type recliner with higher load-bearing capabilities that is used predominantly in VLMs/3rd row seat structures and certain recliner models manufactured by Faurecia are offered as separate products on the market and sold also to third party producers of VLMs/3rd row seat structures.
31. Furthermore, the parties argue that the supplier of a VLM/3rd row seat structure generally has full control over the choice of recliner – i.e. they can opt for either a special recliner or a more standard recliner used in a front seat (of the manual lever type).

32. The market investigation confirmed the parties' argument that VLM/3rd row seats normally require a special recliner with higher load-bearing capabilities. However, a manual lever recliner can sometimes also be used if the overall design can compensate for the lesser strength of such a recliner. VLM/3rd row seat recliners account for a relatively small share of overall demand – only between 5% and 15% based on the market investigation. Furthermore, a significant majority of VLM/3<sup>rd</sup> row seat structure suppliers use their own recliners for their VLM/3rd row seat structures. This supports the parties' views.
33. Furthermore, most OEMs care primarily about the overall design of the VLM/3rd row seat structures and are flexible on the design of the recliner (including whether it is a standard or special recliner). This again corresponds to the parties' argument that OEMs leave considerable freedom to the Tier 1/2 suppliers in selecting recliners for VLMs/3rd row seats and lends further support to the argument that the majority of these supplies are classical in-house supplies.
34. The above elements therefore call into question the need to delineate a separate market for recliners used in VLM/3rd row seat structures. However, the market definition can be left open as competition concerns do not arise irrespective of the market definition:
- i) If VLM/3rd row seat structures were to be considered to be part of an overall market comprising all types of recliners, this would not have a bearing on the competitive assessment due to their relatively small share of overall demand.
  - ii) If special recliners that can only be used in VLM/3rd row seat structures were to be considered to belong to a separate market, there would not be an overlap according to the parties. Nor would there be an overlap in the merchant market for recliners used in VLMs/3<sup>rd</sup> row seat structures.
  - iii) Even if the respective Keiper recliner were to be considered as belonging to a hypothetical market comprising recliners used predominantly in VLMs/3rd row seat structures, the competitive assessment is unlikely to be materially different from the competitive assessment for the markets for VLM/3rd row seat structures as it appears that a great majority of VLM/3rd row seat structure manufacturers supply their own recliners in-house.
35. For the reasons outlined above, the distinction per type of seat does not have to be considered further in the assessment of recliner markets.

#### *Specificities of CRH recliners*

36. The parties also submit that manual lever and power rotary recliners manufactured by CRH should not be considered as classical recliners due to certain technical specificities. The market investigation clearly confirmed that CRH recliners belong to the same market as other recliners. The recliners supplied by CRH will therefore be included in JCI's market shares for the purposes of the competitive assessment.

#### *Conclusion*



37. Based on the above, it appears that the most relevant aspect of product market definition is the type of recliner: manual lever, manual rotary and power rotary. However, the market definition can be left open in the present case as the transaction does not raise competition concerns irrespective of how the product market is defined.

### **Length adjusters**

38. Length adjusters are mechanisms to move car and truck seats<sup>12</sup> forward and backward by means of tracks on which the seat slides. These length adjusters can be operated manually or power driven.
39. The market investigation showed that from the demand side perspective, there is limited substitutability between manual and powered length adjusters. The latter are mainly requested for front seats of luxury, executive and sports cars. As regards supply side substitutability, the production of powered length adjusters seems to require specific knowledge. Consequently not all manufactures - including Keiper - supply both manual and powered length adjusters.
40. In *JCI/CRH*, the Commission left open whether length adjusters constitute one market as a whole or whether it should be further segmented. This approach is also followed in the present case as the transaction does not raise competition concerns irrespective of how the product market is defined.

### **Height and tilt adjusters**

41. The parties also produce both height and tilt adjusters. These are mechanisms to adjust the height and tilt (inclination) of the car seat in light vehicles<sup>13</sup> and can be used manually or power assisted.
42. The market investigation showed that there is only limited demand side substitutability between height adjusters and tilt adjusters. Generally, height and tilt adjusters serve different purposes and are therefore not substitutable for the user. However, a minority of OEM respondents explained that they use height adjusters to achieve the tilt function.
43. Height and tilt adjusters are essentially based on the same technology, and similar components and manufacturing equipment are used for their production. Whilst the small size of the tilt adjuster market makes it less attractive than that of height adjusters, all suppliers of height adjusters are technically able to produce tilt adjusters, and could do so with little investment. Currently, with the exception of two smaller competitors, all suppliers of height adjusters also supply tilt adjusters. As in *JCI/CRH*, in the present decision, the products are therefore regarded as belonging to one overall market for height and tilt adjusters. The outcome of the competition assessment would in any case not vary if they were considered separately.

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<sup>12</sup> The market investigation showed that length adjusters can be used for both truck and car seats. With respect to car seats, the same type of length adjusters can be used for front seats and for VLM backseats although the latter sometimes contain a specific inhouse solution.

<sup>13</sup> The market investigation broadly revealed that height and tilt adjusters are only used in cars or LCV as trucks use a suspension mechanism instead.

44. The market investigation also showed that there is no demand side substitutability between manual adjusters and power adjusters as powered height and tilt adjusters are requested from and expected by drivers particularly of luxury and executive cars.
45. At the supply side, most of the producers of powered height and tilt adjusters explained that their manual adjusters are combined with speed reducers, gears and motors sourced from specialised suppliers such as Bosch, Nidec or from the Chinese company SHB. Therefore, existing manual height and tilt adjusters can be converted to a power version. However, sourcing and adaptation processes are necessary, need time and lead to additional costs. Therefore, it is more likely that manual and powered height and tilt adjusters do not belong to the same market. However, for the purposes of the present decision, this does not have to be decided.
46. For the purpose of this decision, it can be left open whether manual and powered height and tilt adjusters constitute separate markets as the transaction does not raise competition concerns irrespective of how the product market is defined.

### **Latches**

47. Latches (also called locks or locking systems) are mechanisms that lock one vehicle element to another. Latches for seat applications are used to fix the backrest of a rear seat bench in its usual position, allowing it to be released when the backrest is folded, or to lock a seating element to the floor. The parties consider that there is a separate product market for latches for seating applications, as these are technically distinct from latches for other automotive applications (such as latches used in automotive trunks and doors). Whereas the general locking functions of latches for seating and other automotive applications are comparable, the requirements regarding load, freeplay, crash resistance and release require different technical solutions. It may therefore be that latches for seating applications cannot be used in other parts of the car. The exact market delineation can, however, be left open for the purpose of this decision as there are no competition concerns irrespective of the market definition.

### **IV.1.2. RELEVANT GEOGRAPHIC MARKETS**

48. In line with previous Commission decisions concerning OEM markets for automotive components<sup>14</sup> and car seats and/or seat structures and mechanisms in particular<sup>15</sup>, the parties submit that the markets for complete seat assemblies, seat structures and length adjusters are at least EEA wide in scope whilst they consider the markets for recliners and height and tilt adjusters to be global in scope.
49. Though the just in time assembly of complete **car seats** requires closeness to the car manufacturing site – according to all car manufacturers responding to the this question in market investigation respondents, it has to be within a maximum radius of roughly 100 km – competition for the award of contracts takes place in EEA-wide bidding/tender procedures. Car manufacturers that do not have currently an assembly site nevertheless bid. Following the award of a seat assembly contract the new supplier either builds such a site or takes it over from the former supplier which is possible due to the relatively long

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<sup>14</sup> *COMP/M. 1563 - Ford /Plastic Omnium; COMP/M. 5799 – Faurecia/Plastal.*

<sup>15</sup> *IV/M.937 – Lear/Keiper ; COMP/M. 5930 JCI-Michel Thierry Group and COMP/M. 6045 – JCI/CRH.*

lead time between the award of the contract and the start of production (usually 2 or more years). Vice versa, seat manufacturers that have an assembly site near the car manufacturing plant may nevertheless lose the seat assembly contract to a competitor. The geographic scope of the OEM market for complete car seat assemblies is therefore considered to be EEA-wide.

50. Similarly, **car seat structures** are, with very few exceptions (some Asian car manufacturers), sourced from within the EEA, although a number of car manufacturers - regularly or occasionally - also invite non-EEA seat structure manufacturers to participate in their bidding procedures. The assembly of seat structures or structure parts does not require the same closeness to the car manufacturing site as for car seats - the majority of OEM respondents stated a maximum radius of 1000 km. However, for cars manufactured in the EEA, the OEMs normally only invite tier 2 suppliers that have a manufacturing/assembly site for seat structures in the EEA. Furthermore, seat structures and their subassemblies are generally bulky and do not package well so that transportation costs and time exceed any potential benefits from sourcing in countries with lower labour costs outside the EEA. Therefore, and in line with the parties' submission and the Commission's previous decisions, the market(s) for seat structures are considered to be EEA-wide and not global in scope.
51. As regards car seat **mechanisms**, in *JCI/CRH*, the Commission concluded that these markets are at least EEA-wide in scope and found indications that some of these markets may be even global in scope but this was left open.
52. On the one hand, the assembly of seat mechanisms does not require as such closeness to the car manufacturing site - the vast majority of OEM respondents stated that distance does not matter in sourcing decisions and that mechanisms could be sourced from far outside the EEA. For example, according to the parties, [5-10]% of recliner demand is currently imported into the EEA including from suppliers that do not have an EEA presence (JCI itself sources certain recliners directly from [...]) Moreover, the number of global tenders is increasing and in principle enables competitors with no or little presence in the EEA to supply significant volumes in the EEA as well.
53. On the other hand, most of the competitors - European and non-European - stated that it is relatively difficult for a producer without a footprint in Europe to establish a significant presence in the EEA. This is largely due to established and historical supplier relationships in the EEA and also the lack of experience and know-how in applying to EEA tenders. The cost disadvantage due to distance is a less widely quoted reason. Responses from OEMs also confirmed that for cars manufactured in the EEA, OEMs normally only invite mechanism suppliers to tender that have a manufacturing/assembly site in the EEA for either mechanism and/or seat structures. Some Asian car manufacturers at least partly source their mechanisms in the EEA also from their well-known Asian suppliers, including competitors without an EEA presence. Finally, as outlined above, there may be a developing trend with the increasing use of global tenders.
54. In conclusion, despite indications that the market is becoming increasingly global, the scope of the geographic market presently appears to be EEA-wide. However, it is not necessary in the present case to define the geographic scope exactly since even on the basis of EEA-wide markets the transaction does not raise serious doubts as to its compatibility with the internal market.

## IV.2. HORIZONTAL EFFECTS OF THE TRANSACTION

55. The parties' activities overlap with respect to seat structures, recliners and length, height and tilt adjusters.

### IV.2.1. Preliminary remarks

56. The parties provided market share estimates based on all plausible product segmentations for the EEA and worldwide. Referring to standard industry practice followed for example in the relevant industry reports<sup>16</sup>, the parties provided market share data only in volume. The parties submit that due to the significant differences in the price of complete car seats, metal structures and mechanisms, it is impossible for them to provide market share estimates based on sales value.
57. Furthermore, the market share data provided by the parties comprise external and internal sales of both the parties and their competitors, i.e. i) supplies to independent third parties, and ii) intra-group supplies of seat structures and mechanisms used in the parties'/competitors' own upstream products (complete seats and/or seat structures). The parties submit that this reflects more accurately the actual market situation as even vertically integrated complete seat or seat structure suppliers do not generally have full control over their seat structure and/or mechanism supplies (with the notable exception of recliners for VLMs/3rd row seats as explained above in para 33).
58. The parties submit that OEMs increasingly exercise a decisive influence over supply decisions of not only seat structures but also mechanisms of even vertically integrated suppliers. As regards the tier 3 suppliers of mechanisms, the parties state that there are currently three OEMs (Volkswagen, Fiat and GM) accounting for roughly 40% of car production in the EEA which tender mechanisms separately. The parties estimate that additional OEMs accounting for ca. 35% of total EEA car production are set to source mechanisms separately in the future. In addition, all OEMs, when conducting structure or substructure tenders, require structure suppliers to disclose the supplier and the price of seat adjustment mechanisms integrated into the structures through "open book" calculations. This system allows OEMs to influence the sourcing choices and costs of their tier 1 supplier, even though the tender by the tier 1 supplier is nominally for the structure and not for the individual components. The aim of this system is to ensure the tier 1 supplier offers the OEM the best quote possible by rendering its input costs transparent to the OEM customer.
59. In its market investigation, the Commission looked into the sourcing strategy of OEMs and their influence on supply decisions relating to seat structures and mechanisms. Overall, it appears that OEMs exercise a decisive influence on the supplies of seat structures and also mechanisms at least for a significant part of internal supplies. In general, as such influence does not always result from a direct tender, it is not possible to identify exactly what share of internal supplies of the parties and competitors has been directed or influenced by the OEM and what share resulted from an independent decision of the seat structure suppliers.
60. In addition, in order to verify the parties' market share estimates, the Commission requested all EEA competitors identified by the parties for car seat structures, recliners, length adjusters and height and tilt adjusters to provide quantitative data on their annual supplies of

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<sup>16</sup> E.g. CSM, Global Insight and Polk only publish volume-based figures.

the respective products between 2008 and 2010. This data collection exercise is referred to throughout this Decision as the "market reconstruction".

61. Data were requested from competitors on the basis of the relevant product segmentation within each wider product group and separately for external and for internal supplies without prejudice to whether such a distinction is relevant in these markets. Data were requested in both value and volume for external supplies, again without prejudice to the relative importance of either indicator.
62. The compilation of comparable value data for internal supplies would have been difficult due to likely differences in internal accounting practices and would have been a burdensome exercise for respondents. Therefore, in order to facilitate the collection of complete and comparable data, only volume data were requested for internal supplies.
63. Finally, competitors were requested to provide data on their annual supplies within the EEA and also worldwide. As in several product markets, there are significant global competitors outside the EEA that have not supplied the relevant data, the reconstruction of global markets is not always complete. At the global level, the parties compete with an even higher number of competitors and have lower market shares than in the EEA. Since the proposed transaction does not raise competition concerns even in the EEA, this conclusion also holds at the global level.
64. As explained above in paras 58 and 59, internal sales are often the result of a competitive tender decision or at least of a transparent monitoring of the OEM as the final customer which therefore has a significant influence on the component suppliers. Therefore, and because of the often different and unclear delineations of internal and external sales by the mostly vertically integrated suppliers, the data used in this decision include both internal and external sales.
65. The market share figures – calculated on the basis of the market reconstruction – that are primarily used in the following assessment are based on volume (unit) data and include both internal and external sales. This allows for an aggregation of internal and external sales and for a comparison between the parties' estimates and the market reconstruction.

#### **IV.2.2. Tier 1: Complete Car seats**

66. According to the parties, JCI is the leading assembler of complete car seats in the EEA with a market share of [40-50]% followed by Lear and Faurecia that each achieve a market share of roughly 20-30%, with Magna achieving a significantly lower share (0-5%).
67. The merger with Keiper will not bring about any significant changes in market structure since Keiper (more exactly Keiper's Recaro business) is a niche player supplying seats for sports/premium cars and achieves, according to the parties, a negligible market share of [...]%.
68. Moreover, some car manufacturers also assemble a certain proportion of their car seats themselves - either directly in-house or through a subsidiary such as Volkswagen's Sitech Sitztechnik ("Sitech"). Other examples are TS Tech of Honda and Toyota Boshoku, which is just starting car seat manufacturing in the EEA. Although these types of seat manufacturers assemble car seats only or mainly for companies of their group, at least in the EEA, they may - as is the case for Peugeot's Faurecia which carries out a large part of

its seat and seat components business for external car manufacturers - also start manufacturing for third parties.

69. In light of the very small increment and the presence of credible alternative competitors, the transaction does not raise competition concerns on the market for complete car seats.

#### **IV.2.3. Tier 2: Seat structures**

70. JCI is one of the two main players in seat structures. According to the parties, in 2010 it achieved a market share of [20-30]% in the overall market for standard seat structures: 20-30% in the various segments and sub-segments (cushion assembly and backrest assembly)<sup>17</sup> of standard front and rear seat structures and [10-20]% in VLMs/3<sup>rd</sup> row seats. A large part of JCI's sales volume is considered to be internal because JCI is also an important seat assembler.
71. Keiper, with a share of [5-10]% according to the parties in the overall seat structure market in 2010 (5-10% in the standard front and 0-5% in the standard rear seat structure segments and sub-segments), is generally not a strong player. The only exceptions are VLMs/3<sup>rd</sup> row seat structures where according to the parties' estimates, it achieved a share of [10-20]%. In contrast to JCI, Keiper has no internal sales and sells seat structures exclusively to third parties.
72. The Commission's market reconstruction broadly confirmed the parties' estimates for standard front and rear seat structures and even resulted in lower shares in some of the segments and sub-segments. Accordingly, the parties would achieve combined market shares between 20%-30% in the various front and rear seat structure segments<sup>18</sup>. Whereas JCI has rather similar shares across the segments, Keiper is marginally stronger in front seat structures than in rear seat structures.
73. Faurecia will remain the market leader in standard front and rear seat structures where, according to the market reconstruction, it achieved in 2010 market shares between 30%-40% (front seat structures) and 40-50% (rear seat structures). Although it is a fully vertically integrated Peugeot subsidiary, Faurecia supplies a large part of its structures outside the group and regularly bids for/wins contracts with various other car manufacturers.
74. The third largest player is Lear (with shares of 5-20% depending on the segment) followed by Brose. Magna is also active in almost all seat structure segments but it achieves relatively small shares (0-5%).
75. Other smaller competitors with overall shares of roughly 0-5% include Prevent, Viza Automocion ("Viza"), Heuliez, Koki, Istringhausen, Grupo Antolin and Toyo Seat which only started to manufacture seats and seat structures in Europe in 2007. Another manufacturer that currently produces for internal use in the EEA stated that it will start production of certain seat structures for a third party in 2014. Finally, there are other suppliers that in the EEA currently produce seat structures only for companies of their

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<sup>17</sup> Only for the sub-segment of rear seat cushion assemblies do the parties estimate JCI's share to be slightly higher, i.e. within the range of [30-40]%, and slightly lower for VLM/3<sup>rd</sup> row structures.

<sup>18</sup> The calculations presented here are based on data for 2010.

group but can be regarded as significant manufacturers of seat structures across the various seat structure segments and may enter also production for third parties.

76. As regards the segment of VLMs/3<sup>rd</sup> row seat structures, post-merger, the parties will become the market leader. According to the market reconstruction data, their combined share is 50-60% (JCI: 40-50, Keiper 10-20%), which is significantly higher than what the parties estimated (as mentioned above: 18[10-20] for JCI and [10-20]% for Keiper). This is mainly due to the fact that parties appeared to include competitors that do not – or do not yet - supply these VLMs/3<sup>rd</sup> row seat structures, at least not in the EEA. The parties' main competitors are Faurecia with 10-20% followed by Viza and a number of smaller competitors such as Koki, Grupo Antolin and Autoliv, each with a market share between 0-5%. One other competitor stated that it will start production of VLM/3<sup>rd</sup> row seat structures in 2013. Finally, other suppliers that currently manufacture VLMs /3<sup>rd</sup> row seat structures for internal use may enter production for third parties also regarding this segment.
77. The two already leading competitors, i.e. JCI/Keiper and Faurecia, will together account for roughly 60-70% of the overall seat structure market. However, the market structure will not change significantly because - as mentioned above - Keiper is with [5-10]% in the overall seat structure market not a very strong player. In any event, as outlined above, there are a number of significant as well as smaller suppliers that compete across the segments and/or are rather strong in certain segments.
78. Moreover, car manufacturers have a decisive influence over the choice of seat structure suppliers. Thus, approximately half (and in certain segments such as complete front seat structures a majority) of OEM respondents stated that they select – either fully or partially - their tier 2 suppliers of the different types of seat structures themselves by means of tender or bidding procedures. Others that leave the selection – either fully or partially - to the tier 1 suppliers of complete seats nevertheless exercise influence over the choice as already mentioned above (paragraph 59).
79. Therefore, the actual competition as to front, rear and VLMs/3<sup>rd</sup> row seat structures takes place at the bidding level whereas the sales data for the previous 1-3 years only reflect results of bidding competitions that took place several years earlier. Currently, most of the car manufacturers invite several seat structure suppliers to bid for contracts (some stated they usually invite 6 or more bidders for front, rear and VLMs/3<sup>rd</sup> row seat structures, a majority said 3-5 bidders), and they have no interest to limit their choices.
80. Although according to the OEM respondents it was generally considered that there will be post-merger still sufficient competition/a sufficient number of competitors in the market, some stated that they would start sourcing outside the EEA/globally or in general seek alternative sources of supply or manufacturing seat structures themselves in case of a durable significant price increase. In that context, it should be noted that car manufacturers often cooperate with the tier 2 suppliers in developing the seat structures for a certain car model or platform – of which the car manufacturers also often own the IPR – well ahead of the actual production process. Consequently, smaller suppliers can also develop new seat structure models, plan production and slowly adjust capacity for larger – normally long-lasting – contracts in response to such a request by a car manufacturer. Smaller competitors have already managed to win relatively large contracts in the past or will enter a new seat structure segment (e.g. one competitor stated it would enter VLM/3<sup>rd</sup> row seat structures in 2013). Consequently, even some of those

smaller seat structure competitors that submitted critical remarks (primarily as to the vertical impact of the merger, see below), stated that this, however, might increase their business opportunities in the future.

81. As to potential competition from outside the EEA, it should be noted that there are several large, mostly Asian, manufacturers of seat structures that either have already entered seat and seat structure production in the EEA as, for instance, is the case with Toyo Seat in 2007, or are about to do so, as is the case for the Toyota subsidiary Toyota Boshoku, which is currently starting seat and seat structure assembly in France. Other non-EEA suppliers have been already invited to tender: three car manufacturers replied that they regularly invite non-EEA suppliers to tender for seat structures and another stated that it received an invitation 'from time to time'. Finally, even if manufacturers such as VW's Sitech or Toyota Boshoku currently exclusively or primarily supply their parent and sister companies, they have the potential to develop into an alternative supplier for third parties, as is the case with Peugeot's Faurecia already today.

#### *Conclusion - seat structures*

82. Post-merger there will be 3 significant vertically integrated seat structure suppliers—among them Faurecia that will remain the market leader in the main segments of standard front and rear seat structures – and about 10 smaller competitors that are active in several seat structure segments. Some of these smaller suppliers have only recently entered seat structure production in the EEA or expanded their output due to more contract awards and/or will enter new into other segments soon. These factors indicate an effective degree of competition in the seat structure market(s), not least to the important role played by car manufacturers in the selection of seat structure manufacturers.
83. In light of the above, the transaction does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement with regard to horizontal effects in any of the seat structure markets and/or segments.

#### **IV.2.4. Tier 3: Mechanisms**

##### **Introduction**

84. As will be outlined in the following, there are high combined market shares resulting from the transaction in a number of EEA-wide mechanism markets. On this basis, some partially integrated intermediate suppliers of car seats have expressed concerns of both a horizontal and vertical nature - a number of such suppliers fear a rise in prices and/or being excluded from critical component supply. The assessment below therefore examines whether such potential effects are sustainable, in particular in terms of entry and the context of the important role that OEMs play in this market. Although each section below describes this context separately, the analysis is generally common to all the mechanisms markets considered.

##### **Recliners**

85. Whilst Keiper has both internal and external supplies of recliners, JCI only supplies recliners for its own seat structure production. Consequently, the parties' activities only overlap if both external and internal supplies are taken into account in the competitive assessment. This also means that the only comparable indicator for the assessment is volume.



86. As regards the market reconstruction, in each of the three product segments, i.e. manual lever, manual rotary and power rotary recliners, data were obtained from competitors that, according to the parties' estimates, accounted for at least 95% of EEA supplies (in volume). However, the reconstruction of global markets is not complete due to a number of competitors at the worldwide level which did not provide market data to the Commission as they were not or only marginally active in the EEA between 2008-2010. In any event, the parties submit that at the global level, they compete with an even higher number of competitors and have lower market shares than in the EEA. This has been confirmed by the market reconstruction. Since the proposed transaction does not raise competition concerns even in the EEA, this conclusion holds *a fortiori* at the global level.
87. Between 2008 and 2010, the parties both supplied manual lever and power rotary recliners in the EEA. Only Keiper supplied manual rotary recliners. [...] and CRH last supplied manual rotary recliners in 1997 based on a technology that it no longer uses. This notwithstanding, JCI/CRH will start supplying manual rotary recliners to [...] in [...]. JCI is also in the process of developing a manual rotary recliner for [...], which did not specify the recliner supplier for this particular contract [...]. Due to the potential competition from JCI/CRH, the possible effects of the proposed transaction on the manual rotary recliner market are also assessed.

#### *Market structure - recliners*

88. The parties estimate their combined market share for **all types of recliners used in front seats** to be [60-70]% (JCI [5-10]%; Keiper [50-60]%). The remaining competitors, according to the parties' estimates, are Faurecia with [30-40]% and several smaller competitors with [0-5]% or less, including manufacturers with EEA facilities (Autoliv, Brose) and manufacturers based outside the EEA, in particular Japan (Fuji Kiko, Imasen). Although the market reconstruction showed somewhat lower combined market shares of (50-60)% for the parties (JCI (10-20)%; Keiper (30-40%)), the overall market structure consisting of two large players and a small number of significantly smaller players was broadly confirmed.
89. The parties estimate their combined market shares in **manual lever recliners**<sup>19</sup> in the EEA to amount to [30-40]% (JCI [10-20]%<sup>20</sup>; Keiper [10-20]%). The parties submit that Faurecia would continue to be the market leader with [50-60]% followed by significantly smaller competitors (Fuji Kiko [5-10]%, Imasen [0-5]% and a few other competitors with [0-5]% or less). Based on the results of the market reconstruction, it would be the combined entity that would become the market leader (combined market share of 50-60%; JCI: (10-20)%, Keiper (30-40%)), although Faurecia would remain a comparable

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<sup>19</sup> The parties submit that it would not be appropriate to treat Keiper's supplies of manual lever recliners for VLMs as part of an overall market for manual lever recliners. This is because the VLM/3rd row structure manufacturer has full control over the choice of recliner, and the supply of such recliners therefore constitutes classical intra-group supplies that are not part of a market and do not give rise to market shares of the manufacturers concerned. The Commission's market reconstruction on the other hand included these sales in Keiper's manual lever sales.

<sup>20</sup> JCI also has a joint venture with a Chinese competitor, Shanghai Yanfeng with production facilities in China. This JV also supplies manual lever recliners to the EEA. For the purposes of the competitive assessment, the sales of both JVs have been allocated to JCI.

competitor in second position with (40-50)%. The market reconstruction indicated only one other significant competitor in this segment.

90. The parties estimate that Keiper has [70-80]-[80-90]% of the **manual rotary recliner** market (depending on the methodology used)<sup>21</sup>. Faurecia is the only other significant supplier identified by the parties. The market reconstruction showed significantly lower market shares for Keiper of (50-60)%, although with such shares, it would nevertheless remain the market leader Faurecia would be the only other competitor with a relatively high market share (40-50)% and there would remain at least three competitors with small market shares altogether accounting for (0-10)%.
91. Depending on the methodology used, the parties estimate their combined market shares in **power rotary recliners** to be [50-60]-[60-70]% (JCI [5-10]-[10-20]%; Keiper [40-50]%). Faurecia is estimated to have [20-30]% with Autoliv ([10-20]%) and Brose ([0-5]%) also present in this segment. This market structure was broadly confirmed by the market reconstruction. In particular, despite high combined market shares of (50-60)% for the parties with a (10-20)% increment by JCI, Faurecia remains a strong alternative supplier with (30-40)% and there are also at least two other competitors remaining that are comparable in size to pre-merger JCI (Autoliv and Brose with (10-20)% and (0-10)% respectively).
92. Although the market structure in 2010 shows relatively high combined market shares for the parties, it should be noted that this market structure is the result of a competitive situation from several years ago. This is due to the fact that contracts for recliners are normally concluded for the longer term: the market investigation indicated that contracts are on average concluded for a duration of 5 to 10 years. The Commission therefore investigated the competitive pressure on the parties in recent tenders and contracts as this reflects more accurately the current competitive situation.

#### *Assessment - recliners*

93. According to the parties, they currently face competitive constraints from a number of additional competitors as compared to the competitors that supplied recliners in the EEA between 2008-2010. These competitors actively participate in EEA tenders and have already won significant tenders. Based on the market investigation, it also appears that there are more credible alternatives for recliners than what is suggested by the market structure based on supplies in 2008-2010. In particular, there appear to be several credible competitors regularly participating in EEA tenders that had little or no supplies to the EEA between 2008 and 2010. This is true for all the main types of recliners, i.e there are no indications that competition for some types of recliners would be significantly more limited than for other types of recliners. The competitive assessment that follows therefore applies to all types of recliners.
94. Besides the parties there are at least 4-5 competitors that are regularly invited to/participate in EEA tenders, including competitors that have not previously supplied

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<sup>21</sup> The [80-90]% is based on Keiper's actual sales divided by overall market volume estimates. The [70-80%] market share was extrapolated from a detailed analysis of the sales of different car models that the parties used to estimate competitors' market shares. They then used the same methodology to estimate Keiper's own market shares in order to have comparable results.

significantly the EEA market and who are nevertheless mostly successful when applying to EEA tenders. There are currently at least five competitors besides the parties who either i) already supplied the EEA between 2008-2010 and/or ii) are regularly and mostly successfully applying to tenders. In addition, it was confirmed that a sufficient number (more than 5) of current and future/potential competitors would be able to expand production significantly and/or enter the market to attract a significant part of the demand from the parties should the parties attempt a 5-10% price increase. The market investigation also provided concrete indications that some of these competitors will likely significantly increase their presence in the EEA in the coming years.

95. In particular, capacity, though a key requirement for OEMs, does not seem to be a significant barrier to entry or expansion. Although there does not appear to be a significant overcapacity in the market, competitors generally confirmed that they could expand capacity in a timely fashion if awarded a contract. In addition, the reputation of the parties does not seem to be a significant barrier to entry/expansion as OEMs did not generally consider the parties to have any special advantages as compared to competitors.
96. Most of the competitors regularly participating in EEA tenders did not consider either that the parties had any special advantages that would be difficult to emulate for competitors. Economies of scale and patents (in particular of Keiper) were mentioned as such advantages by a minority of these competitors. The parties submit on the other hand that some key patents of Keiper have recently expired or are about to expire. Also, Keiper has previously licensed patents to a number of competitors, in particular in Asia, who are therefore familiar with the technology.
97. Finally, although Keiper and JCI/CRH are considered to be close competitors by both OEMs and competitors, OEMs did not indicate the parties to be the closest competitors for any type of recliner. One other competitor seems to be the closest competitor to Keiper. Furthermore, four other competitors were also indicated to presently be close competitors to Keiper.
98. The above elements therefore confirm the parties' argument that there would be a sufficient number of credible competitors remaining following the merger which would constrain the merged entity in EEA recliner markets. This general view was also supported by explicit statements from a number of OEMs accounting for a very significant part of car production in Europe, which considered that competition in recliners will still be sufficient following the merger.
99. Also, in addition to the competitive constraint stemming from competitors, customers themselves, in particular OEMs, are in a position to influence to a significant extent the competitive dynamics of the market even when they do not tender directly for recliners.
100. In general, the market investigation confirmed the parties' argument that OEMs accounting for a substantial part of total car production already tender directly for recliners. The evidence also suggests that competitors do not have full sourcing control over their recliner suppliers even when they have their own recliner capabilities. Even when the OEM does not tender directly for recliners, the market investigation suggested that they may direct the seat structure supplier to source recliners from a certain supplier and/or oblige the seat structure supplier with its own recliner capabilities to match a certain price offered by another recliner supplier. The evidence overall therefore supports

the parties' arguments that OEMs are involved to a significant extent in the sourcing of recliners by seat structure manufacturers.

101. Switching to an entirely new supplier for an existing contract does not appear to be straightforward due to the time and effort it would take to approve and test the new product as part of the overall seat structure design. However, this is already the case for any contract supplied by a single supplier. In addition, the parties appear to be constrained in their attempts to raise prices for at least some of their existing contracts due to contractual terms – although this may not be the case for all contracts.
102. In any event, an attempted and unjustified price increase for existing contracts carries with it the risk of being excluded from future tenders. For such a threat to be a credible deterrent, a significant amount of new demand should come to the market every year. Based on the information provided by the parties and received from the market investigation, this appears to be the case for recliners. Taking the parties' example, in 2008/9 JCI applied for a contract for manual rotary recliners for [...] which had a total volume of almost [...] million units, which was more than JCI's entire EEA production of recliners in 2010 (around [...] million units). In the past three years, Keiper applied for contracts worth [...] times more than their supply in 2010 (accounting for significantly more than the entire market in 2010).
103. The market investigation also confirmed that OEMs themselves could take steps to counter attempts by the merged entity to increase prices following the merger. In particular, OEMs accounting for a significant majority of car production could either switch to an alternative supplier and/or sponsor the entry of a new supplier and/or even start supplying recliners themselves. With respect to sponsoring entry in particular, some extra-EEA suppliers appear to be ready to supply the EEA but find it difficult to establish a significant footprint due mainly to reasons that are within the control of OEMs to change (e.g. historical supply relationships, lack of experience in applying to tenders, lack of certification etc).

#### *Conclusion -recliners*

104. Following the merger, there will be at least 4-5 credible suppliers remaining besides the parties that participate regularly and successfully in EEA tenders and which can increase supplies significantly if needed. Depending on the willingness of OEMs to source from additional, in particular Asian, suppliers, the number of potential competitors may even be higher. Based on the competitive pressure stemming from current competitors and the capability (due to their important role in determining the supply of components) and willingness of OEMs to further increase this pressure (in particular by sponsoring entry, entering themselves or tendering more broadly), the transaction does not raise competition concerns in the EEA market for recliners (irrespective of the precise market definition).
105. Due to the more moderate market positions of the parties in globally defined markets and the presence of an even higher number of credible competitors, the transaction does not raise competition concerns on such markets.

#### **Length adjusters**

#### *Market structure – length adjusters*

106. The parties estimate that JCI has [30-40]% and KRA [5-10]% of an overall length adjuster market. For the manual segment, they estimate their shares to be [30-40]% (JCI) and [10-20]% (Keiper). In both cases, Faurecia is the strongest supplier identified by the parties with market shares which they submit are about [50-60]% in both cases. The market reconstruction showed significantly lower market shares for JCI (10-20)% whilst the figures for Keiper were broadly confirmed in the overall segment and overestimated in the manual segment where it actually accounts for (5-10)%. Faurecia is in both cases stronger with market shares of (60-70)% in both hypothetical markets. Other competitors (Lear, Brose) account for (10-20)%, thus somewhat more than estimated by the parties.<sup>22</sup> There are no overlaps in powered length adjusters.

*Assessment – length adjusters*

107. The market investigation revealed that no adverse effects on competition are expected post merger. Faurecia will still be the market leader and with Brose and Lear, there are other credible suppliers active in the market.
108. Moreover, capacity constraints do not play a significant role in the market. All European and non European suppliers declared that they have spare capacity or that it would at least be possible for them to expand capacity in a timely fashion if they were awarded a contract. In fact, the significant majority of suppliers stated that they bid for requests for quotes or tenders even in cases where they do not have sufficient spare capacity given that a significant volume is to be awarded.
109. Finally, although the mechanism markets are EEA-wide in scope, there are in particular a number of Asian suppliers such as Fuji Kiko, Aisin Seiki, DAS or Toyota Boshoku which already exert competitive pressure on those suppliers active within the EEA. Three of them declared that they have – although without success – already quoted for tenders in the EEA. They found it difficult to enter the European market mostly due to well established relationships between European car manufacturers and their European suppliers. However, car manufacturers can in principle (and a number confirmed that they would) actively invite these Asian suppliers to quote and therefore become actual competitors in case they were to feel a potential lack of competition in the market.

*Conclusion – length adjusters*

110. Faurecia is currently and will remain post merger the market leader with (60-70)%. Moreover, there are besides Faurecia and the parties two other actual and several potential competitors in the market. Furthermore capacity constraints do not play a significant role in the market. Finally, there are several possibilities of the OEM to counteract any anticompetitive attempt of suppliers in the market. For the abovementioned reasons, the transaction does not raise serious competition doubts as to its compatibility with the internal market and the EEA Agreement with regard to horizontal effects in in the markets for length adjusters.

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<sup>22</sup> At a worldwide level, the shares would be higher for JCI and somewhat lower for Keiper. The combined share is again similar, as Faurecia's position is significantly weaker but Lear's is stronger than EEA-wide. Furthermore, there are three other market players whose market shares are less than 5% each (Aisin Seiki, Imasen and Shiroki).

## Height and tilt adjusters

### *Market structure – height and tilt adjusters*

111. In height and tilt adjusters viewed as one overall market, the merger would not change the market structure which is characterised by three major players (Faurecia being the strongest, followed by JCI and Brose), with all of them having market shares of about 25-35%. Keiper is currently one of the 4 minor suppliers (which are, apart from Keiper, Rollax, Isringhausen, and Lear) whose market shares are of (0-5) % each. These figures submitted by the parties are broadly in line with those derived from the market reconstruction. The merged entity would "catch up" with current market leader Faurecia.
112. This picture would change if manual and powered height and/or tilt adjusters would constitute markets of their own - there are three more competitors (Isringhausen, Rollax, Koki<sup>23</sup>) producing manual height and tilt adjusters compared to powered ones. In manual height and tilt adjusters, the parties estimated their market shares to be [30-40]% ([20-30]% JCI, [0-5]% Keiper) which is broadly in line with the market reconstruction. In powered height and tilt adjusters, JCI ([30-40]%) and Keiper ([10-20]%) have higher market shares, Faurecia has [30-40]% and Brose [10-20]% (according to the parties' estimates). The first three figures are broadly in line with the market reconstruction. However, Brose's sales are overestimated whilst Lear's share is missing. Both do not achieve more than 10% of the market respectively.
113. The merged entity will therefore be the market leader with a combined share of (50-60)% of the EEA wide market and three remaining competitors, these being Faurecia, Brose and Lear (which, however, currently does not supply third parties but uses powered height and tilt adjusters only for captive use in its own seat structures). Nevertheless, as outlined below, the market investigation revealed that no adverse effects on competition are expected post merger.

### *Assessment – height and tilt adjusters*

114. The market structure in an overall and in a manual height- and tilt adjusters market would as such not raise serious competition concerns as there are pre and post merger three major players in the market and another four smaller competitors. In a hypothetical market for powered height- and tilt adjusters, the parties achieve higher combined market shares of (50-60)% and there is only one significant player and two smaller ones.
115. The market investigation revealed that capacity constraints do not play a significant role in the market. All European and non European suppliers declared that they have spare capacity or that it would at least be possible for them to expand capacity in a timely fashion if they were awarded a contract even in cases where they do not have sufficient spare capacity given that a significant volume is to be awarded.
116. Moreover, there is potential competition from suppliers active in manual height and tilt adjusters. The majority (including Keiper) of suppliers of powered height and tilt

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<sup>23</sup> Koki already offers manual height and tilt adjusters and expects to start production soon.

adjusters do not even necessarily consider them as a product in itself but rather as manual adjusters which are combined with a motor and a gear provided by third suppliers not active in the car seat business, such as Bosch or Nidec. Even the most recent entrant, Koki, confirmed that it would be able to supply powered height or tilt adjusters based on its manual ones.

117. Although the markets are EEA-wide in scope, there are in particular a number of Asian suppliers which declared that they are ready to deliver to the EEA market.<sup>24</sup> On occasion, they have already quoted for tenders, but found it difficult to enter the European market mostly due to well established relationships between European car manufacturers and their European suppliers. However, as is the case with length adjusters, car manufacturers can in principle (and a number confirmed that they would) actively invite these Asian suppliers to quote and therefore become actual competitors in case they were to feel a potential lack of competition in the market.
118. In addition to the competitive constraint stemming from actual and potential competitors, customers themselves, in particular OEMs, are in a position to influence to a significant extent the competitive dynamics of the market.
119. In general, the market investigation confirmed the parties' argument that OEMs accounting for at least a substantial part of total car production already tender directly for height and tilt adjusters. The evidence also suggests that competitors do not have full sourcing control over their adjuster suppliers even when they have their own adjuster capabilities. Even when the OEMs do not tender directly for height and tilt adjusters, the market investigation suggested that they may oblige the seat structure supplier with its own adjuster capabilities to match a certain price. Furthermore, the OEM can easily choose to directly tender their height and tilt adjuster in the future in case they had not done so in the past. As capacity is not a constraining factor for bidding, competitors with currently low sales will also bid and effectively constrain the behaviour of the market leader.
120. With a view to current contracts, the parties appear to be constrained in their attempts to raise prices due to contractual terms. In any event, an attempted and unjustified price increase for existing contracts carries with it the risk of being excluded from future tenders. For such a threat to be a credible deterrent, a significant amount of new demand should come to the market every year. Based on the information provided by the parties and received from the market investigation, this appears to be the case for height and tilt adjusters.
121. Finally, the majority of the OEMs as final customers (representing a significant majority of total cars produced in the EEA) declared that they would be able to counteract any attempts at price increases, either by themselves taking up production of complete car seats, car seat structures or mechanisms or by enabling/facilitating market entry. With respect to the latter, several Asian suppliers appear ready to supply the EEA but find it

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<sup>24</sup> On a hypothetical worldwide market, the parties' combined market share would be significantly lower (less than half) as Lear's position is much stronger outside Europe and with Aisin Seiki, there is at least one Asian company which provides powered height and tilt adjusters to a non insignificant extent. There are 3 Asian firms which declared that they had in the past quoted for EEA tenders or which had not because they were not invited to do so.

difficult to establish a significant footprint due mainly to reasons that are within the control of OEMs to change (e.g. historical supply relationships, lack of experience in applying to tenders, lack of certification etc).

#### *Conclusion – height and tilt adjusters*

122. In both a hypothetical overall and manual height- and tilt adjusters market, the market structure does not raise serious competition concerns as there are pre and post merger three major players in the market and another four smaller players. In powered height- and tilt adjusters, there are besides Faurecia two other although smaller actual and several potential competitors in the market. As capacity constraints do not play a significant role in the market, even small competitors are a significant competitive force in the market, particularly when height and tilt adjusters are tendered. Finally, there are several possibilities for the OEM to counteract any anticompetitive attempt of suppliers in the market. For the abovementioned reasons, the transaction does not raise serious competition doubts as to the transaction's compatibility with the internal market and the EEA Agreement with regard to horizontal effects in the market for height and tilt adjusters.

#### **Latches**

123. The market for car seat latches is characterised by one very strong player, Witte, with a market share of [50-60]%<sup>25</sup>, followed by Faurecia ([10-20]%) and Keiper ([10-20]%) and a number of smaller players such as Valeo, Grupo Antolin, Brano and JCI which achieve market shares of about [5-10]% or less. Post merger, the market structure will not change significantly - the parties will have a combined market share of [10-20]%. In light of this and in view of the strong position of Witte and a number of other credible competitors, competition doubts as to the transaction's compatibility with the internal market and the EEA Agreement with regard to horizontal effects in the market for car seat latches can be excluded.

### **IV.3. VERTICAL EFFECTS OF THE TRANSACTION**

#### **IV.3.1. Introduction**

124. The parties achieve combined market shares of more than 25% with respect to the following input components for car seats or car seat structures (upstream markets): recliners, length adjusters, height and tilt adjusters, seat cushion foam<sup>26</sup> and automotive seat covers<sup>27</sup>. Moreover, there are hypothetical markets for the supply of speciality seats for Light Vehicles to the IAM<sup>28</sup>, crash-active head rests<sup>29</sup>, power head rest adjusters<sup>30</sup>,

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<sup>25</sup> Internal estimates of JCI and KRA based on CSM European light vehicle production numbers.

<sup>26</sup> No overlaps between the parties. JCI has a market share of [30-40]%.

<sup>27</sup> No overlaps between the parties. JCI has a market share of [30-40]%.

<sup>28</sup> In 2010, Keiper only supplied [<50.000] seats for Light Vehicles to the IAM in the EEA.

<sup>29</sup> Keiper only assembles structures for crash active head rests. Other suppliers in this market either manufacture complete crash active head rests or the relevant individual components which can easily be assembled into structures squeezing out Keiper's services.



seat cushion extensions<sup>31</sup> and metal components and subassemblies<sup>32</sup> which technically constitute vertically affected markets. They will, however, not be treated as such for the purposes of this decision since the impact of the transaction on these markets is negligible as indicated in the respective footnotes.

#### **IV.3.2. No input foreclosure**

125. In view of Keiper's relatively low market shares in the overall market for **seat structures** (roughly [5-10]%) and the respective sub-segments for front seat structures (5-10% for front seat structures, 0-5% for rear seat structures, and 10-20% for VLM's/3<sup>rd</sup> row seat structures), the parties – through the merger - are unlikely to get the means and/or incentive to foreclose JCI's competitors in the manufacturing of complete car seats from access to seat structure inputs. Moreover, it is the car manufacturers that select the tier 1 suppliers of car seats by means of bidding procedures. With respect to seat structures, approximately half of the car manufacturers stated in the market investigation that they also select the tier 2 suppliers of seat structures (see above, paragraph 78). Even those that leave the selection of tier 2 suppliers – either fully or partially - to the tier 1 suppliers of complete seats nevertheless exercise influence over the choice as already mentioned above (see paragraph 59). Therefore, the new combined entity would not have the ability post-transaction to foreclose to any significant extent its competitors in the downstream market of manufacture of complete car seats to access the upstream seat structures.
126. In view of the parties' relatively modest shares on the downstream markets for car seats or several car seat structures and the existence of strong fully integrated competitors such as Faurecia or Lear, input foreclosure is highly unlikely, as also confirmed by the market investigation.
127. Both Keiper and JCI supply third party **seat structure manufacturers with mechanisms**. Both JCI and Keiper supply length adjusters. Only Keiper supplies recliners and only JCI supplies height and tilt adjusters to third party manufacturers.<sup>33</sup>
128. As outlined above in the present Decision, the competitive constraint stemming from a number of credible competitors together with the significant influence of OEMs on the sourcing of components is sufficient to prevent the parties from acting independently of their competitors and customers in both the upstream (components) and downstream (seat structure) markets concerned. In other words, the parties would be constrained in any attempt to increase prices as further explained below.
129. In particular, as also referred to above, currently almost half of the car seat components produced in the EEA are subject to component sourcing - meaning that they were tendered before the actual tender for the downstream products. Other OEMs which still

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<sup>30</sup> Insignificant market presence only of JCI (5%) upstream to (front) seat structures where the parties have moderate market shares.

<sup>31</sup> Insignificant market presence only of JCI (5%) upstream to (front) seat structures where the parties have moderate market shares.

<sup>32</sup> Insignificant presence (less than [0-5]% in a highly fragmented market) by JCI upstream of the markets for seat structures and mechanisms.

<sup>33</sup> Keiper supplies only very limited quantities of powered height adjusters to third parties.

rely on a Tier 1 supplier with extended autonomy request open book calculations and benchmark prices, meaning that OEMs keep the pricing of components under close review.

130. Moreover, the market trend is towards greater component sourcing, although the parties' estimate that the share of component purchases directed by OEMs will continue to rise to up to 80% of mechanisms has not been substantiated. However, in any case, those OEMs which currently do not practise component sourcing could adapt their sourcing policy if and when they become aware that the fully integrated tier 1 suppliers may stop behaving "competitively". The parties would under these circumstances not have the ability post-transaction to foreclose to any significant extent its competitors in the downstream market of car seats and/or seat structures to access the upstream markets of components and mechanisms. Furthermore, they actually have a clear incentive to quote for mechanism tenders as they could never be sure that they would also get the structures or the complete car seat award. The same holds for the other fully integrated car seat suppliers.
131. Some of the smaller and/or non- or less integrated seat/seat structure suppliers submitted critical comments as to the increasing vertical integration in the market which they fear may result in higher costs for their mechanism purchases. However, even among these competitors, some also hope for increased business opportunities as a result of the merger (as one stated: "*On the other hand, we hope that ...OEM purchasing strategy might bring us new opportunities*"). Furthermore, these suppliers account for less than 10-20% of the markets/segments for seat structures using these mechanisms. The major suppliers of seat structures - including the parties - are also vertically integrated with their own mechanism<sup>34</sup> capabilities - such competitors generally account for 80-90% of the respective seat structure markets/segments.
132. Other competitors replying to the market investigation did not see any competition or, more specifically, foreclosure problems or only increased opportunities for themselves. One competitor stated that the "*OEMs will want to reduce [the parties' market share] percentage and give [competitor name] sales opportunities*".
133. Furthermore, OEMs are generally not concerned about the merged entity foreclosing access to car seat mechanisms following the merger. The significant majority of OEMs confirmed that any attempt of foreclosing access to mechanisms would likely fail due to the presence of alternative suppliers – the fact that several of the main seat structure competitors have their own mechanism capabilities makes an input foreclosure strategy even less attractive. In addition, in the case of recliners specifically, OEMs in general did not consider that even seat structure manufacturers without recliner capabilities would become less viable following the merger. Again, the market investigation indicated that OEMs could counteract any such attempts including for example by changing suppliers, negotiating/directing recliners directly (even if not tendered directly) and excluding the parties from future tenders. Overall, the significant majority of OEMs see no or even a positive impact to their business as they expect an increased benefit in JCI and Keiper products being offered together. Only two smaller OEMs expressed a potential concern

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<sup>34</sup> All the main competitors have recliner capabilities and most of them also have height, tilt and length adjuster capabilities.

that the merger could limit their product choice, and these concerns have not been substantiated.

134. Based on the analysis outlined above, it is concluded that the parties would not have the ability to significantly foreclose access to inputs following the merger.

#### **IV.3.3. No customer foreclosure**

135. As to the downstream tier 1 level of complete car seat assemblies the merger does not change the market structure in view of Keiper's marginal activities (increment of [0-5]%). Regarding the tier 2 level of seat structures where the parties achieve an overall combined share of 20-30%, post-merger a sufficient number of larger and smaller seat structure manufacturers will remain. Furthermore, in view of the rather small increment on the downstream car seat or car seat structures market, the merger would not significantly change competition conditions on these markets.
136. Moreover, as has been specified, the OEMs play an important role as regards the choice of both complete car seat and seat structures manufacturers as well as the component parts that make up the seat structures. Furthermore, they usually have detailed knowledge of the cost structure and manufacturing processes of their suppliers.
137. Given the above, the merged parties will have neither the ability nor the incentive to foreclose non-integrated component manufacturers from access to manufacturers of seat structures. As such, the transaction does not raise any serious doubts as to its compatibility with the internal market and the EEA Agreement in this regard.

## **V. CONCLUSION**

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

*For the Commission  
(signed)  
Joaquín ALMUNIA  
Vice-President*