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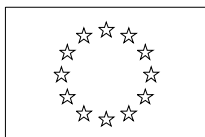
*Case No COMP/M.6045 -
JCI/ CRH*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/01/2011

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EUROPEAN COMMISSION

Brussels, 14.01.2011

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6045 - JCI/ CRH
Notification of 1 December 2010 pursuant to Article 4 of Council
Regulation (EC) No 139/2004¹**

1. On 1 December 2010 the European Commission received a notification of a proposed concentration 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 CRH group of companies ("CRH") 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. JCI's stocks are traded on the New York Stock Exchange.
3. The automotive business of JCI includes the manufacturing of complete car seats and of metal structures, components and mechanisms for car seats. These products and systems are sold to the automotive original equipment market.
4. CRH is a manufacturer of metal structures, components and mechanisms for car seats as well as of other automotive components.

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

II. CONCENTRATION

5. JCI intends to purchase all of the shares of the CRH group of companies.² The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

6. The notified operation has an EU dimension within the meaning of Article 1(2) of the Merger Regulation. The aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million³ (JCI: 21 063 EUR million, CRH: [...] EUR million). Each of them has a EU-wide turnover in excess of EUR 250 million (JCI: [...] EUR million, CRH: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

IV. COMPETITIVE ASSESSMENT

7. Both JCI and CRH manufacture and sell metal structures and mechanisms for car seats. Additionally, JCI is also active in the assembly of complete car seats and car seat structures and therefore a potential purchaser of a number of other seat components produced by CRH. Consequently, both horizontally as well as vertical effects arise from the transaction. Potentially horizontally affected markets arise in respect of seat structures, length, height and tilt adjusters as well as in crash-active head rests. Furthermore, potentially vertically affected markets arise in respect of the downstream markets of complete car seat assembly and power recliners.

IV.1. RELEVANT PRODUCT MARKETS

8. The products in question are supplied to car manufacturers (original equipment manufacturers, "OEM"), not to the independent aftermarket.
9. As neither CRH nor JCI manufactures car seats, seat structures and the other seat mechanisms and components for heavy vehicles, the following competition assessment is based on light vehicles only, since, given that, as will be shown below, competition concerns do not arise on the basis of light vehicles only, this would be true *a fortiori* if light and heavy vehicles were to be considered together.

² 100% of the shares in the companies: CRH Automotive GmbH, CR Hammerstein Limited, Admiral Industriebeteiligungen GmbH and Hammerstein Grundstücks GmbH & Co. KG. Furthermore, JCI will acquire [...] % of the shares of Steel Automotive Engineering Besitzgesellschaft mbH & Co. KG ("SAE KG") and [...] % of the shares of Steel Automotive Engineering Beteiligungsgesellschaft mbH ("SAE GmbH"); CR Hammerstein Limited already holds [...] % in each of both SAE companies that it already jointly controls with two other shareholders. The purchase of the additional shares by JCI in SAE will not change the joint control over the SAE companies.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

IV.1.1. Car seats and metal structures for car seats

IV.1.1.1. Complete seats

10. JCI manufactures standard seats that are specifically designed for particular models of car. Automotive standard seats consist of three key components – the metal structure, foam cushions and the seat cover. The production of complete seats/seat systems is to a large extent an assembly activity: car manufacturers usually source the different components separately from third parties and the seat manufacturer assembles the parts close to the car factory.
11. The Commission in previous decisions⁴ has left open whether the complete seat/seating system or individual components constitute the relevant product market(s). In the present case, considering the activities of the parties (in car seat assembly as well as in the manufacture of individual seat components and mechanisms that are integrated into car seats), the possible relevant markets are the complete seats as well as the metal seat structures, and the individual mechanisms and components from which these are made.
12. In the present case, the market definition can be left open as serious doubts do not arise under any alternative market definition.

IV.1.1.2. Metal structures for car seats

13. Both JCI and CRH manufacture one of the key components of car seats - the metal structures, which consist of: the cushion assembly (the structure for the seating area into which the length, height and tilt adjusters are then integrated), and the backrest assembly (the structure for the backrest into which the recliner is integrated). The Commission has not dealt with metal structures for car seats in previous decisions.
14. According to the parties, it may be possible to further distinguish between the two key components for the car seat metal structure (cushion assembly and backrest assembly), but also between front seat and rear seat structures. According to the parties, front seats and rear seats have different technical specifications as the functionality, safety and comfort requirements are different, which mean that they require different mechanisms and technologies.⁵ The parties state that OEMs usually organise separate tenders for front and rear seats as well as for cushions and backrests, so that OEMs may have four different suppliers for the seat structures for the same car model: for front seat cushion assemblies, front seat backrest assemblies, rear seat cushion assemblies and rear seat backrest assemblies.

⁴ IV/M.666 – Johnson Controls/Roth Frères; IV/M. 937 – Lear/Keiper; IV/M.1093 - Ecia/Bertrand Faure, COMP/M. 5930 JCI/MTG of 22 November 2010.

⁵ Front seat structures must enable individual adjustment of the seat's positions and therefore typically contain various adjustment mechanisms such as length adjusters, height and tilt adjusters and recliners. Rear seat structures do not require the same adjustment mechanisms but must, on the other hand, allow increase of space in the trunk.

15. According to the parties, a further distinction may be possible between front and rear standard car seats and other more specialised type of car seat structures. As regards front seats, in certain very limited number of models of cars⁶ for instance, the belts may not be attached to the car structure but to the seat itself, requiring more solid seat structures to ensure they can support added stress. These integrated seat structures ("ISS") have specific technical specifications and require different equipment and technology to standard car seats. As regards the rear seats, the parties claim that some car models use very large mechanisms (VLMs) and third row seats, given that their special functionalities require different equipment and technologies to standard rear car seats. The parties claim, however, that VLMs and third row seats use similar technology and equipment and that all the suppliers that provide one also provide the other, and that therefore these should not be distinguished. The market investigation did not provide a uniform picture regarding this possible further segmentation for non standard or specialised front and rear seat structures.
16. In the present case, the market definition can be left open as serious doubts do not arise under any alternative market definition.

IV.1.2. Mechanisms and components for car seats

IV.1.2.1. Length adjusters

17. JCI and CRH both produce length adjusters. These are mechanisms to move the seat forward and backward by means of tracks on which the seat slides. Length adjusters can be operated manually or power driven. Previous Commission decisions in the car sector have not dealt with length adjusters.
18. 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. However, many manufacturers offer both versions for other, non-luxury car models (e.g. manual adjusters for the base model, optionally with a powered version). Regarding supply side substitutability, the parties submit that all manufacturers of length adjusters have the capability to develop and produce manual length adjusters for all major car models but that the production of powered length adjusters requires specific knowledge. Therefore, only a limited number of manufactures - including the parties – supply both manual and powered length adjusters.
19. The market investigation confirmed the non-substitutability between powered and manual length adjusters from the demand side perspective. As to supply side substitutability, the majority of car manufacturers and competitors replied that manufacturers of manual length adjusters could without significant investment and time start production of powered adjusters. However, the exact product market definition can be left open, since the transaction does not raise serious doubts as to its compatibility with the internal market under any of the alternative market definitions.

⁶ The number of cars in the EEA that use ISS is only approximately [50.000 – 100.000]. These are executive, luxury coupés or convertible cars.

IV.1.2.2. Height and tilt adjusters

20. The parties also produce both height and tilt adjusters. These are mechanisms to adjust the height and tilt (inclination) of the car seat. Although they serve different purposes and are therefore not substitutable for the user, the parties consider that the two products are part of the same market since height and tilt adjusters are essentially based on the same technology and usually purchased jointly for a certain model by the car manufacturer from the same supplier. Consequently, most suppliers in the market manufacture both height and tilt adjusters. This has been confirmed by the market investigation: the vast majority of both car manufacturers and competitors replied that manufacturers of height adjusters are in principle, i.e. without significant investment and time, able to switch to/start production of tilt adjusters and vice versa. For the purpose of this decision, it is therefore considered that height and tilt adjusters belong to the same relevant product market.
21. According to the parties, there is limited demand and supply side substitutability between manual and powered height and tilt adjusters. As in the case of powered length adjusters, powered height and tilt adjusters are also mainly requested for seats of luxury, executive and sports cars. However, the parties also submit that manufacturers of height and tilt adjusters in principle have the capability to develop and manufacture both manual and power adjusters.
22. The market investigation confirmed the non-substitutability from the demand side perspective. As to supply side substitutability, the majority of car manufacturers and competitors replied that manufacturers of manual height and tilt adjusters could without significant investment and time start production of powered adjusters, although a not insignificant minority of competitors did not believe that such supply side substitutability existed. In any case, the exact product market definition can be left open, since the transaction does not raise serious doubts as to its compatibility with the internal market under any of the alternative market definitions.

IV.1.2.3. Recliners

23. Recliners are used for adjusting the inclination of a seat's back rest. The Commission has not yet dealt with recliners for car seats in previous decisions. There are two types of manual recliners: rotary (continuous) and lever (discontinuous) reclines. Furthermore, powered (rotary) recliner versions are also offered. According to the parties, there is only limited demand side substitutability between these types of recliners because there are different preferences of the OEM and the final customer depending on the region of car sales and the particular brand or car equipment. On the other hand, although significant investments may (as the parties indicate) be required when switching production from one type of recliner to another, the market investigation revealed that the main suppliers offer all types of recliners.

24. However, the exact market definition can be left open for the present case, since the transaction does not raise serious doubts as to its compatibility with the internal market under any of the alternative market definitions.⁷

IV.1.2.4. Crash active head rests

25. Head rests are cushions attached to the top of the back of an automotive seat to prevent spinal injuries of passengers in the event of an accident. So-called crash active head rests contain a mechanism that moves the head rest towards the head of the passenger in the event of a collision. This prevents the typical recoil of the passenger's head and ensures an even more efficient protection against whiplash injury.
26. The parties argue that car manufacturers consider standard head rests and crash active head rests as interchangeable only to a limited extent due to the significantly better protection against spinal injury offered by crash active head rests. Accordingly, there is also only limited demand side substitutability between the two types of head rests. The development of crash active head rests requires considerable investment since many of the existing technologies are protected by patents.⁸ With one exception, all OEMs indicated that they would not switch from crash active head rests to normal ones in case of a 5-10% price increase mainly because there are safety requirements necessary at least for luxury vehicles. Also on the supply side, there are suppliers like TS Tech, Lear, Grammer, Keiper, Fehrer and Faurecia offering both kinds of head rests; on the other hand, the market investigation revealed that other suppliers like Trevès, Brose, Sitec and Magna do not offer crash active head rests due to for example patent restrictions, design differences, lack of specific knowledge or due to necessary validation processes and tooling investments. CRH is active in this market through Nectec Automotive s.r.o., its joint venture with Fehrer Automotive. However, the exact market definition can be left open for the present case, since the transaction does not raise serious doubts as to its compatibility with the internal market under either alternative market definition.

IV.1.2.5. Child seat booster mechanisms

27. Child seat booster mechanisms can be integrated into the structure of a rear seat to allow an adjustment of the height for children. Cars – mostly taxis - that are equipped with child seat booster mechanisms do not need a separate child seat. When the mechanism is in its original position, the seat can be used by adults. According to the parties, integrated child booster seat mechanisms never gained appeal in the market and are in decline because of the relatively high price and the easier use of other flexible seats for children.

⁷ There is no horizontal overlap between the parties, and CRH has only low ([0-5] % for manual lever recliners) to moderate ([10-20] % for powered recliners) market shares. The market investigation revealed that Keiper and Faurecia are the strongest market players and that CRH plays only a minor role.

⁸ In case IV/M.666 Johnson Controls/Roth Freres, the Commission considered that (all) head rests constitute the relevant product market. However, in that period (1995), crash active head rests did not exist.

28. Child seat booster mechanisms cannot be substituted by other seat structure mechanisms from the viewpoint of the demand side (except perhaps by removable booster seats). Regarding supply side substitutability and the ability of rear seat structure manufacturers to easily switch production/start the manufacturing of child seat booster mechanisms, the picture is less clear. Around half of the companies asked (competitors and car manufacturers) said that such switching would be difficult, i.e. would require time and significant investment, whereas the other replies stated that it would be relatively easy. However, the exact definition can be left open for the present case, since the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative market definition.

IV.2. RELEVANT GEOGRAPHIC MARKETS

29. In line with the Commission's previous decisions concerning OEM markets for automotive components, the parties submit that the geographic scope of all product markets is at least EEA-wide. The market investigation confirmed this view, whilst there are indications that in particular car mechanisms and components are tendered and purchased by car manufacturers at a global level. As components and mechanisms are compact in size, use little space in packaging and are relatively lightweight, transport costs are low even for shipments between different continents. For instance, JCI has only three production plants for length adjusters worldwide. Therefore, despite exchange rate risks in long term agreements, at least some of the components and mechanism markets may be global in scope.
30. Such a conclusion, however, does not seem to apply for the complete car seats and seat structures markets. Seat structures and subassemblies are generally bulky and do not package well. Although tenders are done at an EEA wide level, industrial constraints (just in time production) and logistical cost require a presence close to manufacturing plants albeit not necessarily in the same country. Transportation costs and time are said to exceed any potential benefits from sourcing in countries with lower labour costs outside the EEA.
31. 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.3. HORIZONTAL EFFECTS OF THE TRANSACTION

32. The parties' activities overlap with respect to seat structures, length, height and tilt adjusters as well as in crash active head rests.⁹ According to the parties' information, their market shares are as follows¹⁰:

⁹ In addition there is a minor overlap in recliners, a market in which JCI was not active in Europe during the last three years. In 2010 JCI started to supply small volumes of manual lever recliners (approx. [...] sets per year) for two cars representing a market share below [0-5]% in the EEA in 2010. Furthermore the parties compete with significantly larger suppliers, such as Faurecia and Keiper which together account for over [80-90]% of total supplies of recliners in the EEA. Therefore, no competition concerns are expected in this market regardless whether JCI is considered to be a potential or an actual competitor.

IV.3.1. Seat structures

Table 1: EEA market shares in 2009

Mechanism/component	CRH	JCI	Combined
Seat structures	[0-5]%	[30-40]%	[30-40]%
▪ front seat structures	[5-10]%	[20-30]%	[30-40]%
➤ Front seat cushion assemblies	[10-20]%	[20-30]%	[30-40]%
➤ Front seat backrest assemblies	[0-5]%	[20-30]%	[20-30]%

Source: Internal estimates of CRH and JCI based on CSM¹¹ data, in volume terms.

33. As to seat structures, the parties' activities are to a great extent complementary and overlap only as regards front seat structures as CRH does not have sales of rear seat structures or VLM/3rd row structures, whilst JCI has no sales of integrated seat structures. JCI has significantly more sales of rear seat structures than front seat structures.
34. In the overall EEA market for seat structures, the increment accounted for by CRH is [0-5]%, with JCI becoming the first player in the market with [30-40]%¹², followed by Faurecia with [20-30]%, Prevent with [10-20]%, Lear [5-10]% and Proma with [5-10]%.
35. In the segment of front seat structures, the combined entity would be the second player with [30-40]%, whilst Faurecia would have [40-50]% of the EEA market. Other players are Lear with [10-20]% and Keiper with [5-10]%. In front seat cushion assemblies, the combined entity would hold a [30-40]% share, with Faurecia with [40-50]% and Lear with [10-20]%.
36. The parties argue they are not close competitors in these segments as they have different focuses as regards their target vehicle categories: whilst CRH derives the vast majority of its sales of front seat structures from the upper-range vehicle categories, the vast majority of JCI's sales of these products are in the intermediate and lower-range vehicle segments. The fact that these two players are not close competitors has been confirmed by the market investigation.
37. The parties also consider that car manufacturers have a direct role in the choice of the seat structures assembler and have strong buying power. The market investigation has also confirmed that the OEMs in the vast majority of cases directly choose the suppliers of their car seat suppliers (the latter also known as Tier 1 suppliers and the first also called Tier 2 or 3 suppliers) via tendering procedures, and pursue a multi-sourcing strategy in order to maintain

¹⁰ For all markets mentioned in this decision, the market investigation broadly confirmed the general picture as to relative market shares submitted by the parties. The parties estimate that if market shares were estimated based on value, such shares would not vary by any significant extent.

¹¹ CSM is an automotive market forecasting service agency often used by the industry.

¹² Should the market be considered wider than EEA, the parties would have significantly lower combined market shares.

competition between their suppliers, thereby strengthening their buyer power. Some players also have in-house production of seat structures, giving them an added bargaining position.

38. The responses of the OEMs are unanimous in considering that post-transaction, there will be alternatives to counter the increased level of concentration in all possible seat structure markets considered above. In addition, no competitors raised substantiated concerns regarding the competitive effects of this transaction in these possible markets, and the market investigation undertaken showed that JCI and CRH are not considered to have specific advantages over their competitors in their overlapping activities in seat structures. Furthermore, the market investigation showed that the industry is not capacity constrained and that at least some players considered they could expand sales to counter a possible strategy of JCI of increasing prices.
39. In light of the above, in view of the parties' relatively moderate combined market shares, the presence of strong competitors in the market, and a strong demand side (OEM), the transaction does not raise serious doubts in any of the possible markets for seat structures.

IV.3.2. Length adjusters

40. The market shares of the parties for length adjusters in the EEA are as follows:

Table 2: Length adjusters - EEA market shares in 2009

	CRH	JCI	Combined
Length adjusters	[10-20]%	[5-10]%	[20-30]%
-manual	[10-20]%	[5-10]%	[20-30]%
-powered	[30-40]%	[0-5]%	[30-40]%

Source: Internal estimates of CRH and JCI based on CSM data, in volume terms

41. Post merger, the parties would be the second biggest market player with a combined market share in the EEA of about [20-30]% in the overall length adjuster market and a similar market share in the segment for manual length adjusters. In the segment of powered adjusters, the parties would achieve a combined share of [30-40]% with an increment of [0-5]%. Many car manufacturers and competitors stated that length adjusters are actually sourced and sold globally. At a worldwide level, the parties achieve combined market shares that are slightly lower.¹³
42. One of the largest suppliers of length adjusters is Faurecia, the market leader in the overall length adjuster market (about [50-60]% in the EEA according to the parties) and in manual length adjusters ([50-60]% according to the parties).¹⁴

¹³ According to the parties' estimates based on CSM data, they would achieve a combined share of [20-30]% on the global overall length adjuster market, [20-30]% in manual adjusters and [30-40]% on the segment for powered length adjusters.

¹⁴ According to the parties, Faurecia would be the second largest supplier – post merger - in the sub-market of powered adjusters ([30-40]% in the EEA, based on 2009 figures).

Other competitors include Keiper ([10-20]% on the overall length adjuster market according to the parties), Brose ([5-10]%) and Lear ([0-5]%).

43. The market investigation found that the suppliers of length adjusters are to a large extent chosen by the car manufacturers¹⁵ and not by the seat structure or seat manufacturers, mostly in worldwide tender procedures. Car manufacturers have strong buying power and can without difficulties switch suppliers.
44. In view of the parties' relatively moderate combined market shares (and, in the case of the powered segment, small increment), the presence of strong competitors in the market, and a strong demand side (OEM), the transaction does not raise competition concerns in the market for length adjusters.

IV.3.3. Height and tilt adjusters

45. The market shares of the parties for height and tilt adjusters in the EEA are as follows:

Table 3: Height and tilt adjusters - EEA market shares in 2009

	CRH	JCI	Combined
Height and tilt adjusters	[10-20]%	[10-20]%	[20-30]%
- manual	[5-10]%	[10-20]%	[20-30]%
- powered	[20-30]%	[0-5]%	[20-30]%

Source: Internal estimates of CRH and JCI based on CSM data, in volume terms

46. Post-merger, the parties would be the second biggest market player with a combined EEA market share of [20-30]% in the overall height and tilt adjuster market and similar combined shares in the two segments. At the worldwide level, the parties would achieve slightly lower combined market shares.¹⁶ Among the other suppliers of height and tilt adjusters there are Faurecia, the market leader, which together with Brose and Keiper account for more than [60-70]% of the market.
47. The market investigation showed that, as is the case for suppliers of length adjusters, suppliers of height and tilt adjusters are also often chosen by the car manufacturers and not by the seat structure or seat manufacturers,¹⁷ mostly in worldwide tender procedures. Therefore, as in the case of length adjusters, car manufacturers exercise considerable buying power and can without difficulties switch suppliers. In view of the parties' relatively moderate combined market shares, strong competitors in the market and a strong demand side (OEM), the transaction does not raise competition concerns in the market for height and tilt adjusters.

¹⁵ More than half of the car manufacturers replied that they select the suppliers of length adjusters.

¹⁶ Globally they would achieve combined shares of [20-30]% on the overall height and tilt adjuster market as well as on the sub-market for manual adjusters and [10-20]% in powered adjusters.

¹⁷ More than half of the car manufacturers replied that they select the suppliers of height of tilt adjusters.

IV.3.4. Crash active head rests

48. The market shares of the parties for crash active head rests in the EEA are as follows:

Table 4: Crash active head rests - EEA market shares in 2009

	CRH	JCI	Combined
Head rests (overall)	[0-5]%	[20-30]%	[30-40]%
Head rests (crash active)	[10-20]%	[10-20]%	[30-40]%

Source: Internal estimates of CRH and JCI based on CSM data, in volume terms

49. The parties' combined market share in this area is [30-40]% in the overall market and [30-40]% in crash active head rests only.
50. The parties argue that while JCI is the biggest supplier in standard head rests, there are a lot of other competitors offering standard head rests, among them Lear, Faurecia, Magna, Keiper, Grammer, Brose, Proseat, Trevès or Fehrer. This was confirmed by the market investigation. It should also be noted that the increment is small and that, according to one competitor, there may be overcapacity in the market.
51. Regarding crash active head rests, the historical market leaders have been Grammer with [20-30]% and Keiper with [20-30]% of the market, followed by the parties and Lear, each accounting for about [10-20]%.
52. The market investigation has confirmed the parties' view that the OEMs in the vast majority of cases directly choose their Tier 2 or 3 suppliers of crash active head rests via tendering procedures in order to maintain competition between their suppliers, thereby strengthening their buyer power.
53. Some competitors raised concerns regarding their own position in the market due to the relatively strong position of the parties considering that there already is overcapacity in the market. Furthermore, some respondents argued that CRH was an unavoidable supplier particularly in crash active head rests. However, no substantiated evidence for this view was provided, and also in light of the relatively moderate combined market shares, it is unlikely to give rise to competitive concerns in practice. Moreover, the responses of the OEMs are unanimous in considering that post-transaction, there will be alternatives to counter the strength of the Parties in all head rest markets considered above. In addition, the industry is not capacity constrained and at least some players considered they could expand sales to counter a possible strategy of JCI of reducing capacity to increase prices.
54. In light of the above, in view of the parties' relatively moderate combined market shares and/or increment, the presence of similarly strong and vertically integrated competitors in the market, and a strong demand side (OEM), the transaction does not raise serious doubts in any of the possible markets for head rests.

IV.4. VERTICAL EFFECTS OF THE TRANSACTION

IV.4.1. Introduction

55. The parties' activities are vertically related, since JCI manufactures complete car seats and therefore is a (potential) buyer of seat structures (i.e. seat structures with integrated mechanisms for adjusting the position of the seat), child seat booster mechanisms, and crash active head rests. In addition, both JCI and CRH manufacture seat structures for which they source – with different focuses and needs – mechanisms and metal components from third parties. Therefore, it has to be assessed whether the merger restricts the access of competitors of JCI to the products of CRH (“input foreclosure”), or limits access of competitors of CRH to a sufficient customer base (“customer foreclosure”).
56. In the market downstream of CRH (complete car seats), JCI's market share is [30-40]%. In the seat structures market, where both parties are active, JCI's market share is [20-30]-[30-40]% (depending on the precise definition of the market) and CRH's market share [0-5]-[10-20]% with combined market shares not exceeding [30-40]%. Both markets are competitive and are characterised by significant buyer power of the car manufacturers.
57. Following the Commission's guidelines on the assessment of non-horizontal mergers¹⁸, markets where the parties' market shares are below 30% with post merger HHIs below 2000 are markets where the Commission is unlikely to find competition concerns. Where a merged entity would have a market share just above the 30% threshold on one market but substantially below on other related markets, competition concerns will be less likely.¹⁹

IV.4.2. No input foreclosure

IV.4.2.1. Car seat and seat structure assemblers

58. In view of CRH's low market shares in the overall market for seat structures ([0-5]%) and the respective sub-segments for front seat structures ([0-5]-[10-20]%), the parties are unlikely to have the means and/or incentive to foreclose JCI's competitors in the manufacturing of complete car seats from access to seat structure inputs. Moreover, a significant majority of respondents to the market investigation specified that the choice of both the complete car seat assemblers and the manufacturers of seat structures are made directly by the OEMs via tender procedures. 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 to the upstream seat structures.

¹⁸ Paragraph 25 of the Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265/6, 18.10.2008.

¹⁹ This is the case for the following upstream markets, where the parties have combined market shares of [0-5]%; Seat cushion extensions, power head rest adjusters, metal components and subassemblies. Given that the market investigation revealed that the parties do not have any competitive advantages on those markets, they will not be discussed any further.

IV.4.2.2. Seat structure/seat assemblers and components/mechanisms manufacturers

59. The parties achieve combined market shares of 5% or more in respect of the following input components or mechanisms (upstream markets): length adjusters ([20-30]-[30-40]% depending on market definition), tilt and height adjusters ([20-30]%²⁰), recliners ([5-10]-[10-20]% depending on market definition) and crash active head rests ([30-40]%). Moreover, there are other input (upstream) markets where only one of the parties is active but has a relatively strong position. This concerns, for instance, the niche market²¹ for child seat booster mechanisms where CRH has an estimated market share of 30-40% according to the parties.
60. The vast majority of respondents stressed that components and mechanisms used for seats and seat structures are selected to a large extent by the car manufacturers in tender procedures. The parties therefore would 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.
61. Capacity constraints do not seem to play a role in the markets concerned: a number of competitors specified that they had spare capacity and the parties provided examples from their own business that due to the significant lead time between the award of a contract and the start of production, suppliers are able to adapt their capacities to the supply volumes awarded to them.
62. Furthermore, in view of the parties' relatively modest shares on these markets and the existence of strong competitors such as Faurecia, Brose or Keiper, input foreclosure is highly unlikely, as also confirmed by the market investigation.
63. As regards child seat booster mechanisms, the parties have neither the incentive nor the ability to foreclose non-integrated competitors from their access to this specific mechanism in view of strong competitors, in particular Grammer, which has an estimated market share of [50-60]%. The few companies providing information on this small market have not named CRH as the leading supplier. Since CRH currently supplies its entire production of seat booster mechanisms to JCI, none of JCI's competitors is dependent for supplies of child seat boosters (which they can also source from Grammer and Kongsberg) on CRH. Moreover, neither of the competing child seat booster manufacturers is dependent upon JCI as a customer.

IV.4.3. No customer foreclosure

64. The car manufacturers' purchasing policy and their significant buyer power would not allow JCI to reduce its purchases from competitors of CRH as for an important part of structures and mechanisms, suppliers are directly selected by

²⁰ If only tilt adjusters were considered, the market share of CRH (JCI is almost not active in this segment) would be between [30-40]% depending on the concrete market definition.

²¹ The parties estimate that only [25 000-50 000] cars per year are equipped with such a mechanism.

car manufacturers (once again depending on the products and the OEM's supply chain policy). Therefore, a refusal of JCI to purchase structures or mechanisms from a third party supplier or an attempt to purchase them at less favourable conditions or to opt for uncompetitive inhouse production is unlikely.

65. Even in such markets or regarding those OEM customers who do not select the Tier-2 suppliers, JCI has no incentive to risk not getting the contract for the complete car seats or car seat structures as there is no scope to benefit from higher prices in the competitive downstream markets.
66. Moreover, JCI's market position is not strong enough in the downstream markets²² such that competitors would be foreclosed from selling their products in the market. The results of the market investigation confirmed that JCI is not considered to hold any specific competitive advantages. Furthermore, among JCI's competitors (meaning alternative customers of Tier-2 suppliers) in the car seats market, there are Faurecia, Lear and Magna with market shares of [20-30]%, [20-30]% and [5-10]%. In addition, besides those bigger competitors, there are other car seat producers, be it smaller competitors such as Treves or Grammer, the OEMs themselves, or firms such as Sitech, which belongs to the VW group (whilst it does not sell its car seats to OEMs outside the VW group, it sources seat structures (and components) from third parties). Therefore, there are sufficient alternative buyers to which CRH's competitors could sell their products.
67. 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. This means that the OEMs can generally prevent a situation where they are obliged to use products inefficiently produced inhouse.
68. 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 the components and mechanisms. 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.

²² See IV.3 and IV.4.

V. CONCLUSION

69. 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)
Siim KALLAS
Vice President*