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***Case No COMP/M.6538 - ROBERT BOSCH/ SPX'
SERVICE SOLUTIONS BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/06/2012

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EUROPEAN COMMISSION

Brussels, 26/06/2012
C(2012)4349

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.6538 – Robert Bosch/ SPX' Service Solutions Business Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 21.05.2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Robert Bosch GmbH ("Bosch", Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of SPX Corporation's repair shop equipment business, which is organized under the name of SPX Service Solutions ("SPX' Service Solutions Business", USA), by way of a purchase of shares and assets.² Bosch and SPX' Service Solutions Business are together referred to below as the "Parties".

(1) THE PARTIES

2. Headquartered in Germany, Bosch is a worldwide supplier of products and services in the areas of automotive, industrial, consumer goods and building technology, in particular automotive electronics and automotive repair shop equipment through its automotive technology division.
3. SPX Corporation is a US-based manufacturer of components and turnkey solutions primarily for the power and energy, infrastructure, automotive and food industries. Through its Service Solutions Business, SPX mainly offers repair shop equipment for the automotive sector, including pure repair shop equipment and specialty service tools and diagnostics

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

² Publication in the Official Journal of the European Union No C 150, 26.05.2012, p. 8.

products, as well as service equipment for air conditioning and refrigeration service industries.

(2) THE OPERATION

4. The Proposed Transaction concerns the acquisition of sole control by Bosch of SPX' repair shop equipment business, also known as SPX' Service Solutions Business, by way of a purchase of shares and assets. It follows that the Proposed Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(3) EU DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million³ (Bosch: EUR 47 259 million; SPX Service Solutions Business: EUR [...] million) and each of them has an EU-wide turnover in excess of EUR 100 million (Bosch: EUR [...] million; SPX Service Solutions Business: EUR [...] million). They also have a combined turnover of more than EUR 100 million in at least three Member States and an individual turnover of more than EUR 25 million in three of these Member States ([...], [...] and [...]). Finally, they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(3) of the Merger Regulation.

(4) RELEVANT MARKETS

6. The main category of products involved in this transaction and relevant to the EEA is automotive diagnostic and testing equipment/devices, including software and services. Automotive diagnostic and testing equipment/devices refer to equipment designed for analysing the motor vehicle condition. The purpose of such tools is to locate quickly and reliably the smallest replaceable defective unit. Nowadays, all new EU vehicles are equipped with an Onboard Diagnostic ("OBD") system which continuously monitors the engine system and components in driving mode to achieve compliance with the emission limits required by law. The OBD system informs the driver of errors and stores a permanent fault message which can later be retrieved by a repair technician by connecting the vehicle's OBD system to the workshop's diagnostic and testing device via a standardized interface.
7. Automotive diagnostic and testing equipment/devices comprise a variety of tools which can be distinguished according to the field of use and application and their specific functionality. Each field of testing requires a specific testing equipment or diagnosis device. Any specific category of diagnostic and testing equipment/devices has a clearly defined functionality and field of application and cannot normally be replaced by another testing device. Automotive diagnostic and testing equipment/devices include, among others, the following products: Electronic Control Unit ("ECU") diagnosis/scan tools; OBD testers; emissions analyzers; fluid service management devices (air conditioning service, motor oil change, gearbox oil change, brake fluids, cooling water); battery service testers; engine testing devices; components testers (diesel system testing, diesel test benches, starter, alternator, pumps, injectors, compressors); wheel aligners; brake testers and test lanes; headlight testers; shock absorber testers. The Commission's

³ Turnover calculated in accordance with Article 5 of the Merger Regulation.

market investigation confirmed that, while all these devices indeed belong to the same broad category of automotive testing devices, none of them are interchangeable.

8. It is only with regard to (1) ECU diagnosis/scan tools; (2) fluid service management devices for air conditioning; and (3) brake testers and test lanes that horizontally affected markets arise. As regards non-horizontal relationships, the market for ECU diagnosis/scan tools is closely related to the market for electronic control units, where only Bosch is active.

Product market definition

9. In automotive electronics, **electronic control unit** is a generic term for any embedded system that controls one or more of the electrical systems or subsystems in a motor vehicle. A sophisticated modern car consists of a variety of separate electronic control units which can be described as mini-computers. Electronic control units serve to control different engine, safety and comfort functions in a vehicle. Electronic control units are mainly hardware. The associated software programming for electronic control units is a different process. Both electronic control units (hardware) and the associated software running on them are developed based on original equipment manufacturer ("OEM") specifications and tailor-made for each new model of a specific vehicle manufacturer.
10. **ECU diagnosis/scan tools** are used to communicate with the electronic control units in a vehicle via a vehicle communication network. They read and reset errors as well as read actual values stored and/or maintained in an ECU. The ECU diagnosis tool is used, for example, when a warning light appears in the cockpit and is then connected to a vehicle's OBD.
11. **Fluid service management devices for air conditioning**, also known as Air Conditioning Service ("ACS") devices, are used to exchange the refrigerants of vehicles' air conditioning circuits. ACS devices also test the tightness of the air conditioning circuits and can be used to measure pressure during the operation.
12. A **brake tester** is used to measure the brake efficiency according to legal requirements (depending on different countries). **Test lanes** are used to check the complete vehicle geometry and consist of a brake tester, a suspension tester, a side slip tester and a plate detector.
13. With regard to each of these tools, the Parties put forward that it is not necessary to further distinguish these tools based on vehicle type, customer type and available functionalities.

Delineation per vehicle type

14. The Parties submit that it makes no sense to differentiate between light and heavy vehicles or between motor vehicles and motorcycles, since all market players active in this segment cover all types of vehicles with their diagnostic and testing equipment/devices. The Parties recognise that, for some product categories, only a slight adaptation is required if heavy vehicles or motorcycles are to be examined (e.g. for emission diagnosis a different probe with a hose is needed). It may also be the case that different software content is required, but it is still based on the standard software. Thus, according to the Parties, the market players focus on different product segments covering all vehicle types within this segment rather than on targeting different vehicle types. As a consequence, diagnostic and testing equipment/devices can be used across a wide range of vehicles from micro cars to heavy weight trucks as well as motorcycles

with no or only minor adaptation required. While some devices such as wheel alignment and tire changers need to be different in size due to different sized vehicles, the same functions are fulfilled and the same sales channels are used.

15. The Commission's market investigation indicated that market players on both the supply and the demand sides do distinguish between the vehicle types. Different manufacturers of diagnostic tools are active in one or several of these vehicle segments and, while the hardware is normally very similar, the software functions and databases have to be adapted to the vehicle segment. In particular, some respondents indicated that the functionalities as well as the level of integration and complexity vary for the different types of vehicle. As such, distinct product markets could be considered for different vehicle types.

Delineation per customer type (OEM vs. IAM)

16. Furthermore, the Parties are of the opinion that a sub-segmentation by customer type into OE/OEM /OES (original equipment service) and IAM (independent aftermarket) is not appropriate. The Parties recognize that OEM/OES and IAM represent distinct sales channels for SPX and Bosch and sales to each channel operate differently. However, the Parties submit that, while OEM/OES and IAM diagnostic products may slightly differ with regard to the software, the hardware specifications for both OEM/OES and IAM customers are similar with slight modifications to match the OEM desired functionality. According to the Parties, although OEMs tend to purchase more sophisticated devices, the basic functionality is the same as the devices purchased by IAM customers all do measurement, pull diagnostic trouble codes and send signals. At most, the software may be adapted in a specific way for a certain manufacturer and the branding and marketing can differ⁴. The Parties also emphasize that IAM repair workshops may purchase OEM/OES diagnostic tools and *vice versa*. Most IAM diagnostic tools cover at least 80% of the functionality of OEM/OES diagnostic tools. The Parties submit that similar prices are paid by OEMs and IAM customers for products with similar functionalities. Moreover, the Parties submit that a distinction between OE/OEM/OES and IAM would contradict the general idea of the Motor Vehicle Block Exemption Regulation⁵, which aims to establish market conditions in the EEA that allow independent repair shops to compete head-to-head with OEMs/OES by breaking up the existing OEM/OES network structures in the EEA.
17. A majority of respondents to the Commission's market investigation consider that there are distinct product markets for diagnostic tools intended to OEMs and those intended to the IAM. They submit that OEM diagnostic tools are much more complete and up-to-date than IAM tools, their system coverage is different and OEMs make some special internal functionalities only available in their tools (e.g. key reprogramming). For example, to perform special functions after changing parts, repair shops often have to go online to the OEM's website (with the OEM scan tool) to complete the repair. Finally, while OEM tools tend to be more precise during the error search, unlike the IAM tools, they cannot be used for other types of vehicles than the ones of the particular OEM.

Delineation per high-end vs. low-end products

⁴ OEMs often apply their own branding while sales to IAM customers tend to be manufacturer branded.

⁵ Regulation (EU) No 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.05.2010, p. 52.

18. Finally, the Parties take the view that, within the diagnostics industry, there is no clear delineation between high-end tools and low-end tools. For all products there is a range of prices and functionality available but with no clear dividing line between low and high end, all tools in the range perform the same basic functionality and all are substitutable to some extent. In relation to diagnostic tools, the Parties argue that these could potentially be further sub-segmented into high-end and low-end, with ECU diagnosis/scan tools being at the high end and OBD testers/code reading tools being at the low end.
19. The Commission's market investigation clarified that OBD testers/code reading tools are generally used to identify the vehicle as well as to display and delete the OBD fault codes, while ECU diagnosis/scan tools perform these basic functions but also test the vehicle, generate test schedules, provide fault identifications procedure and product feedback, and display the diagnosis as well as the repair documents. Based on mere functionalities, there is a clear distinction between ECU diagnosis tools and OBD testers. Moreover, the majority of respondents to the Commission's market investigation confirmed that should the price of ECU diagnosis tools increase, they would not turn to OBD testers to perform the same tasks. However, the market investigation did not bring a clear-cut result with respect to a potential further segmentation between high and low-end within the ECU diagnosis tools only.

Geographic market definition

20. The Parties submit that competition for the supply of all the above products is at least EEA-wide, as players in this industry are active globally, there are no significant differences between products shipped in and outside the EEA, there are no significant legal or actual trade barriers, all manufacturers have low transport costs, and the products being manufactured at a few sites in Europe (Germany, Italy, UK) are sold throughout Europe. In particular, various customers of the Parties operate central purchasing departments, through which they procure their needs for automotive equipment on an at least pan-European basis and then re-distribute such tools internally to local plants in other countries. The Commission's market investigation has broadly confirmed this.

Conclusion on market definition

21. For the purpose of this case, it is not necessary to reach a definitive conclusion concerning the relevant product or geographic markets for ECU diagnosis/scan tools, fluid service management devices for air conditioning, brake testers and test lanes and electronic control units since the Proposed Transaction does not raise competition concerns under any conceivable product or geographic market definition.

(5) COMPETITIVE ASSESSMENT

Horizontal overlaps

22. According to the Parties, the Proposed Transaction will combine two rather complementary businesses. It will provide Bosch with a complementary product portfolio, service and customer access in regions outside the EEA where Bosch currently has only a weak position. It will strengthen Bosch's position as a supplier of diagnostics solutions and will allow Bosch to expand its activities in the market for automotive diagnostics. Bosch would be able to create cost efficiencies in marketing and distribution of a broad range of automotive repair workshop equipment for all players in the market, both the OEM/OES linked repair workshops as well as the IAM workshops.

Further, the Service Solutions Business has experience and capability to develop solutions to the automotive industry, thereby supplementing Bosch's activities in the automotive sector.

23. According to the information submitted by the Parties, the only affected market for the purpose of the present transaction is the overall market for automotive diagnostic and testing equipment/devices, including possible sub-segments.
24. It should be noted that the respondents to the market investigation did not express any significant objections against the Proposed Transaction. None of the customers expressed any competition concerns; on the contrary, some respondents indicated that they see this transaction as a positive event in a market with reasonable growth potential over the coming years. A few competitors expressed concerns which were mainly related to an alleged potential dominant position of the combined entity: for the reasons explained in the following paragraphs, the Parties' actual position in the market for automotive diagnostic and testing equipment devices (including any possible sub-segments) is not an expression of market power and does not lead to any competition concerns.

Overall Market Structure

25. Should the market for automotive diagnostic and testing equipment/devices be segmented according to the products concerned, the proposed transaction will give rise to affected market as follows: (i) ECU diagnosis/scan tools; (ii) air conditioning service and (iii) brake testing and test lanes.⁶

1. ECU diagnosis/scan tools

26. In the overall market for ECU diagnosis (scan tools), the Parties' combined market share in 2011 is less than [20-30%] in the EEA and worldwide⁷.

- *Delineation per customer type (OEM vs. IAM)*

27. Considering a different delineation of the market for ECU diagnosis (scan tools) based on customer type (i.e. OEM and IAM), the market for ECU diagnosis to IAM would be affected with a combined market share for the year 2011 of [10-20%] in value (Bosch: [10-20%] and SPX Service Solutions Business: [0-5%]) and [30-40%] in volume (Bosch: [20-30%] and SPX Service Solutions Business: [10-20%]) in the EEA and [10-20%] in value (Bosch: [10-20%] and SPX Service Solutions Business: [5-10%]) and

⁶ On an overall market for automotive diagnostic and testing equipment/devices, the Parties combined market share for the year 2011 in volume is approximately [20-30%] worldwide (Bosch: [0-5%] and SPX Service Solutions Business:[20-30%]). The Parties combined market share for the year 2011 in value and volume in the EEA and in value at worldwide level are less than [10-20%].

⁷ In particular, [20-30%] in value (Bosch: [5-10%] and SPX Service Solutions Business Solutions: [10-20%]) and [20-30%] in volume (Bosch: [10-20%] and SPX Service Solution Business: [10-20%]) in the EEA and [20-30%] in value (Bosch: [5-10%] and SPX Service Solutions Business: [10-20%]) and [10-20%] in volume (Bosch: [5-10%] and SPS Service Solution Business: [10-20%]) worldwide.

[20-30%] in value (Bosch: [5-10%] and SPX Service Solutions Business: [10-20%]) worldwide⁸.

- *Delineation per type of vehicle (heavy/light/motorcycles)*

28. Considering a different delineation of the market for ECU diagnosis (scan tools) by type of vehicle (i.e. heavy/light/motorcycle), the Parties' combined market share would be as follows:

- i. ECU diagnosis/ light vehicles: [20-30%] (Bosch: [10-20%] and SPX Service Solutions Business: [10-20%]) in the EEA and [20-30%] worldwide (Bosch: [5-10%] and SPX Service Solutions Business: [10-20%]) in 2011.
- ii. ECU diagnosis / light vehicles / IAM⁹: [20-30%] (Bosch: [20-30%] and SPX Service Solutions Business: [0-5%]) in the EEA and [20-30%] (Bosch: [10-20%] and SPX Service Solutions Business: [5-10%]) worldwide¹⁰.

2. Air conditioning services

- *Overall air condition services market*

29. In the overall air condition services market, the Parties' combined market share is less than [20-30%] in the EEA¹¹ and approximately [30-40%] worldwide.

- *Delineation per customer type (OEM vs. IAM)*

30. Considering a different delineation of the market for air conditioning services by customer type (i.e. OEM and IAM), the market for air conditioning services to IAM would be affected with a combined market share for the year 2011 of [20-30%] in volume (Bosch: [5-10%] and SPX Service Solutions Business: [10-20%]) in the EEA¹² and [30-40%] in value (Bosch: [10-20%] and SPX Service Solutions Business: [20-30%]) and [30-40%] in volume (Bosch: [5-10%] and SPX Service Solutions Business:

⁸ The market for ECU diagnosis to OEM is also affected with the Parties' combined market share of approximately [20-30%]. However, Bosch's activities are less than [0-5%]. According to the Parties, in the market for ECU (scan tools) a different delineation per high-end and low-end products within the customer type segmentation (OEM vs. IAM) is not relevant as ECU (scan tools) includes only high-end products.

⁹ The Parties' activities for ECU diagnosis (scan tools) / light vehicles in the OEM channel do not overlap at worldwide level (as Bosch is not present) and in the EEA Bosch has a marginal presence [0-5%].

¹⁰ The Parties' combined market share for ECU diagnosis (scan tools) - heavy vehicles and motorcycle in the EEA and worldwide do not give rise to affected markets in the year 2011.

¹¹ In particular, [10-20%] in value (Bosch: [5-10%] and SPX Service Solutions Business Solutions: [10-20%]) and [20-30%] in volume (Bosch: [5-10%] and SPX Service Solutions business: [10-20%]) in 2011 in the EEA and [30-40%] in value (Bosch: [5-10%] and SPX Service Solutions Business: [20-30%]) and [30-40%] in volume (Bosch [0-5%] and SPX Service Solutions Business: [20-30%]) worldwide. .

¹² The Parties' combined market share in value is [10-20%] (Bosch: [5-10%] and SPX Service Solutions Business: [5-10%]).

[20-30%]) worldwide. The market for Air condition services to OEM is not affected as Bosch is not present.

- *Delineation per high-end vs. low-end products*

31. Within the air conditioning services market, when considering a segmentation between high-end and low-end products, the Parties' combined market share would be as follows:

- (i) Air conditioning services / high-end: [20-30%] in volume (Bosch: [5-10%] and SPX Service Solutions business: [20-30%]) in the EEA¹³ and [30-40%] in value (Bosch: [5-10%] and SPX Service Solutions Business: [20-30%]) and [30-40%] in volume (Bosch [0-5%] and SPX Service Solutions Business: [20-30%]) worldwide.
- (ii) Air conditioning services / low-end: [20-30%] in value for the year 2011 (Bosch: [10-20%] and SPX Service Solutions Business Solutions: [10-20%]) and [10-20%] in volume (Bosch: [5-10%] and SPX Service Solutions business: [10-20%]) in the EEA and [30-40%] in value (Bosch: [5-10%] and SPX Service Solutions Business: [20-30%]) and [30-40%] in volume (Bosch [0-5%] and SPX Service Solutions Business: [20-30%]) worldwide¹⁴.

- *Delineation per type of vehicle (heavy/light)*

32. Considering a delineation of the market for Air condition service by type of vehicle (i.e. heavy/light), the Parties' combined market share would be as follows:

- i. Air condition service / light vehicle: [10-20%] (Bosch: [5-10%] and SPX Service Solutions Business: [10-20%]) in the EEA and [30-40%] worldwide (Bosch: [5-10%] and SPX Service Solutions Business: [20-30%]) in 2011.
- ii. Air condition service / light vehicle / IAM¹⁵: [10-20%] in the EEA (Bosch: [5-10%] and SPX Service Solutions Business: [5-10%]) and [30-40%] (Bosch: [10-20%] and SPX Service Solutions Business: [20-30%]) worldwide in 2011.
- iii. Air condition service / heavy vehicles: [20-30%] in the EEA (Bosch: [0-5%] and SPX Service Solutions Business: [10-20%]) and [30-40%] (Bosch: [5-10%] and SPX Service Solutions Business: [20-30%]) worldwide in 2011.
- iv. Air condition service / heavy vehicle / IAM: [30-40%] (Bosch: [10-20%] and SPX Service Solutions Business: [20-30%]) and [30-40%] (Bosch: [10-20%] and SPX Service Solutions Business: [20-30%]) worldwide¹⁶ in 2011.

¹³ The Parties' combined market share in value is [10-20%] for the year 2011 (Bosch: [0-5%] and SPX Service Solutions Business Solutions: [10-20%]).

¹⁴ In the Air condition services market, when considering a different segmentation between high-end and low-end products per customer type (OEM vs. IAM), the Parties' combined market share would be the same as their combined market share per only customer type (OEM vs. IAM).

¹⁵ The Parties' activities for Air condition / light vehicles in the OEM channel do not overlap in the EEA and worldwide as Bosch is not present.

3. Brake testing and test lanes

33. In the overall brake testing and test lanes market, the Parties' combined market share is less than [10-20%] in the EEA for the year 2011¹⁷.

- *Delineation per customer type (OEM vs. IAM)*

34. Based on a different segmentation of the market for brake testing and test lanes by customer (i.e. OEM and IAM), only the market for brake testing and test lanes to IAM would be affected with a combined market share for the year 2011 of [20-30%] (Bosch: [10-20%] and SPX Service Solutions Business: [10-20%]) in the EEA and [20-30%] (Bosch: [10-20%] and SPX Service Solutions Business: [10-20%]) worldwide.

- *Delineation per high-end vs. low-end products*

35. Within the brake testing and test lanes market, when considering segmentation between high-end and low-end products as well as OEM/IAM high-end and low end, the Parties' combined market share for the year 2011 would be as follow:

- (i) Brake testing and test lanes / high-end: [20-30%] in value (Bosch: [10-20%] and SPX Service Solutions Business Solutions: [10-20%]) in the EEA and [20-30%] in value (Bosch: [5-10%] and SPX Service Solutions Business: [10-20%]) worldwide¹⁸.
- (ii) Brake Testing and test lanes OEM/IAM high-end and low-end: [20-30%] in value (Bosch: [10-20%] and SPX Service Solutions Business Solutions: [10-20%]) and [10-20%] in volume (Bosch: [10-20%] and SPX Service Solutions Business) in the EEA and [20-30%] in value (Bosch: [10-20%] and SPX Service Solutions Business: [10-20%]) and [10-20%] in volume (Bosch: [10-20%] and SPX Service Solutions Business [5-10%]) worldwide in both segments.

- *Delineation per type of vehicle (heavy/light/motorcycle)*

36. Considering a delineation of the market for brake testing and test lanes by type of vehicle (i.e. heavy/light/motorcycle), the Parties' combined market share would lead to affected markets as follows:

- i. Brake testing and test lanes / light vehicle: [10-20%] (Bosch: [10-20%] and SPX Service Solutions Business: [5-10%]) in the EEA and [10-20%] worldwide (Bosch: [10-20%] and SPX Service Solutions Business: [5-10%]) in 2011.

¹⁶ The Parties' combined market share at for Air condition / heavy / IAM in the EEA do not lead to affected markets and for Air condition / heavy / OEM do not overlap.

¹⁷ In particular, [10-20%] in value (Bosch [10-20%]; SPX Service Solutions Business: [5-10%]) for the year 2011 in the EEA and the combined market shares in value, as well as the combined market shares worldwide do not exceed 15%.

¹⁸ When considering volume figures, the market for brake testing and test lanes – high end would not be affected.

- ii. Brake testing /light vehicle / IAM¹⁹: [20-30%] in the EEA (Bosch: [10-20%] and SPX Service Solutions Business: [10-20%]) and [20-30%] (Bosch: [10-20%] and SPX Service Solutions Business: [10-20%]) worldwide in 2011²⁰.

Competitors

37. The market investigation confirmed that post-merger, the merged entity will continue to face competition from a number of important players in the EEA and worldwide both in the overall market for diagnostic and testing equipment devices and the different sub-segments, namely (i) ECU diagnosis/scan tools, (ii) air conditioning services, and (iii) brake testers and test lanes both in the OEM and IAM channel.
38. As regards **ECU diagnosis/scan tools**, competitors include global companies such as Actia (approx. [10-20%] in the EEA and [10-20%] worldwide), Snap-On (approx. [10-20%] in the EEA and [10-20%] worldwide), Sofing, Denso and Sotheim (approx. [0-5%] in the EEA and worldwide respectively).
39. Several competitors are also present in the market for **air conditioning services** including Ecotechnics (approx. [10-20%] in the EEA and [10-20%] worldwide), Texa (approx. [10-20%] in the EEA and [5-10%] worldwide), Wabco and Wuerth (approx. [10-20%] in the EEA and [5-10%] worldwide), Braibee (approx. [5-10%] in the EEA and [0-5%] worldwide), Snap-On (approx. [5-10%] worldwide) and Wigam, ATT and CTR (approx. [0-5%] in the EEA and [0-5%] worldwide respectively).
40. As regards **brake testers and test lanes**, competitors include the market leader Maha (approx. [30-40%] in the EEA and [30-40%] worldwide), Snap-on (approx. [5-10%] in the EEA and [10-20%] worldwide), Champ (approx. [5-10%] in the EEA and [10-20%] worldwide), and ATT and BM (approx. [5-10%] in the EEA and worldwide respectively).
41. The above competitors, together with other players, are also present (with similar market shares in the different sub-segments of the market for ECU diagnosis (scan tools), air conditioning services, Brake testing and test lanes *i.e.* OEM and IAM as well as high-end and low-end products²¹).

Sales patterns

42. The market investigation showed that most customers of automotive diagnostic and testing equipment/devices, including any possible sub-segments generally have a policy

¹⁹ The Parties are not present in the market for brake testing and test lanes / light vehicles in the OEM channel in the EEA and worldwide.

²⁰ The Parties' activities do not overlap in the heavy vehicles and motorcycle segment within the OEM and IAM channel.

²¹ ECU diagnosis (scan tools) OEM / IAM – high-end/low-end in the EEA: Actia [10-20%], Snap-On [10-20%], Softing and Denso [0-5%]; Air Condition service OEM high-end/low-end in the EEA: Echotecnics [10-20%], Texa [10-20%], Wabco and Wuerth [10-20%] Braibee [5-10%]. Air condition services IAM high-end / low-end in the EEA: Echotecnics [10-20%], Texa [10-20%], Wabco and Wuerth [10-20%] Braibee [5-10%]. Brake testing and test lanes OEM /IAM high-end / low-end in the EEA: Maha [30-40%], Snap-On [5-10%], Champ [5-10%], ATT and BM [5-10%].

of multi-sourcing and pursue a "best of breed" strategy trying to select the best product from different vendors. Some customers (in particular OEMs) have indicated that they do not multi-source. However, they would be able to start purchasing from different suppliers in order to preserve a competitive environment. As there are alternative automotive diagnostic and testing equipment/devices manufacturers, the Parties will continue to face competitive constraints post-merger²².

43. According to the information submitted by the Parties, automotive diagnostic and testing equipment/devices are mainly sold via OEM/OES organizations, wholesalers, purchasing department of large automotive repair workshop chains and specialized purchasing cooperation of independent automotive workshops and periodic testing institutes. Bosch estimates that [a large amount] of its sales are distributed via wholesalers. However, wholesalers also sell to OEM/OES, workshop chains and periodic testing institutes and organizations. The remaining [part] is sold directly to the OEM/OES organizations.
44. Bosch operates in the field of automotive spare parts, the automotive aftermarket organisation which addresses wholesalers, retailers and independent automotive repair workshop owners, as well as the spare parts organisation of the large automotive vehicle manufacturers. SPX Service Solutions Business sells directly to OEMs on a global basis and estimates that [a large amount] of its sales to OEMs are direct sales via its own distribution facilities, with the remainder sold through independent distributors. SPX Service Solutions Business distributes its products in the aftermarket in a number of ways, including directly to retailers and end-users and through large distribution organizations as well as other smaller distributors. SPX Service Solutions Business estimates that [a large amount] of its aftermarket sales are distributed via independent retailers, with the remainder sold through its own distribution facilities.
45. The market investigation revealed that OEM customers are large sophisticated players, which typically determine prices of OEM tools as well as other commercial terms and make their purchases through a bidding process, which is highly competitive. Similarly, the vast majority of European IAM distributors and wholesalers are large and sophisticated and typically source their demand from numerous leading diagnostic suppliers and stock an extensive range of competing products for their repair shop customers. Such purchasing patterns maintain pressure on all vendors to offer competitive and cost effective products²³.

²² The Parties submit that while customer preferences for diagnostic tools are generally similar for all customers types, their relative importance differs slightly between the OEM/OES and the IAM sales channels: (1) Main selection criteria for OEM/OES customers include (i) whether a manufacturer meets the set of requirements mentioned in the RFQ; (ii) to what extent the existing product is already compliant with the required product; (iii) customer support/service; (iv) price performance (in relation to functionality) ((i)-(iv) applies mainly for the OEM car manufactures); and (v) recommendation of OEM for OES workshop (applies mainly for OEM distributors and workshops). (2) Main factors for IAM customers (IAM workshops and distributors) include (i) functionality (vehicle coverage, speed, accuracy, usability etc.); (ii) recommendation of wholesaler for IAM workshop, (iii) quality/durability; (iv) price performance (in relation to functionality) and financing/credit (v) customer support (software, training, field service); ((i)-(v) generally applies to both distributors and workshops, with price (iv) being less important than margin for distributors); and (vi) multi-sourcing from different suppliers (applies mainly to distributors).

²³ All the Parties' EEA Air Conditioning and Brake Testing and Test Lanes sales are to wholesalers/distributors, there are no sales direct to OEM dealers.

46. Several respondents confirmed that customers are generally not locked in with their existing suppliers and as a result they can benefit from competition between different suppliers.

Barriers to entry

47. According to the Parties, there are no significant barriers for existing competitors to expand thus allowing them to include new products in their portfolio or increase production. The Parties argue that no technological/commercial barriers to entry exist and the majority of respondents also confirmed that switching costs, although not completely insignificant, do not result in any substantial barriers to entry. However, it should be noted that some respondents to the market investigation indicated that access to distribution networks to enter into the diagnostic and testing segment represent the main barriers to entry in this market.
48. On a world-wide level, the Parties submit that there have been multiple entrants recently in the automotive diagnostic equipment segment, such as TATA Consulting Services (TCS) in 2008, UK vendor Omitec (supplier of automotive diagnostic equipment to car manufacturers) US vendor DrewTech, which recently won a contract to supply diagnostic equipment to Toyota (US), and Chinese company Autel Intelligent Technology. For the EEA, Omitec, Launch and Autel entered into the diagnostic and testing equipment/devices market in the last five years.
49. Other companies that already had a foothold in the diagnostic and testing business developed new functionalities for other testing fields in the automotive area and all the large producers tried either by new development or by acquisition to complete their portfolio of diagnosis and testing equipment/devices. An example is the joint-venture company “Hella-Gutmann Solutions” headquartered in Germany in 2008. Both parent companies – Hella and Gutmann have been active as players in the automotive sector.
50. Finally, the Parties submit that the market for diagnostic and testing equipment / devices is constantly developing with reasonable growth potential over the coming years. Technology changes will be driven by the new technologies applied to automotive vehicles (electrical motors, gas motors, fuel cell motors and combinations thereof). The growth rate is also driven by a further permeation of sophisticated testing in the automotive repair workshop. Diagnostic and testing equipment/devices will be available in the future in any repair workshop, whether it is an OEM connected workshop or an independent aftermarket workshop linked to a large chain or an independently operated repair workshop.

Complaint by a third party to the Proposed Transaction

51. During the market investigation a third party complained with respect to possible horizontal and vertical effects as a result of the proposed transaction.
52. In particular, the complainant claimed that the proposed transaction results in a reduction of major suppliers of diagnostic recovery equipment, therefore limiting customer choice in the EEA and worldwide both for the aftermarket (high-end tools) and the OEM distribution channel in which, according to the complainant, the merged entity would have a significant combined market share of [50-60%] (SPX Service Solutions Business: [20-30%] and Bosch [20-30%]) and [40-50%] (SPX Service Solutions Business: [20-30%] and Bosch [20-30%]) respectively for the year 2008.

53. As regards the vertical effect, the complainant claims that Bosch (and Snap-On) do not provide diagnostic systems or data to third parties and that SPX' Service Solutions Business is a supplier for high-end handheld diagnostic equipment that uses native codes. According to the complainant, post-merger, Bosch would stop SPX Service Solutions Business from supplying native code diagnostic equipment to the complainant. As a result, the proposed transaction would give the combined entity the ability and incentive to foreclose competitors on the aftermarket for high-end tools, which will have detrimental effects on competition.
54. Finally, the complainant argues that the proposed transaction will also have a negative impact in the market for Engine analysers and Air condition recovery equipment, where the Parties would have a significant combined market share of [40-50%] (SPX Service Solution Business: [30-40%] and Bosch: [10-20%]) in Air conditioning recovery equipment²⁴.
55. The Commission analysed the impact of the potential horizontal and vertical effects on competition as a result of the proposed transaction and concluded that it does not give rise to any serious doubts specific to the proposed transaction for the following reasons.
56. First, it should be noted that the complainant, a customer of SPX purchasing air conditioning recovery systems as well as native code diagnostic equipment for the vehicle models of major car manufactures, has only a marginal presence in the EEA as its activities are focused mainly in the US. .
57. Second, the proposed transaction will not result in a reduction from three to two players in the automotive diagnostic and testing equipment/devices sector and in particular in the ECU diagnosis (scan tools) sub-segment - either on a European or on a worldwide level. As indicated in paragraphs 37-41 above, there are a large number of players, which will continue competing with the Parties post-merger all of which are active in the field of diagnostic and testing equipment/devices, including ECU diagnosis (scan tools). This applies also to the IAM (where SPX' Service Solutions Business has a weak position) and the OEM (where Bosch only has a *de minimis* presence) distribution channel. In this respect, the figures presented by the complainant only refer to the year 2008 and are not substantiated. In addition, there is a large difference between the Parties' actual sales in each of the OEM and IAM channels compared with the similar shares of the Parties in both channels claimed by the complainant²⁵.
58. As regards the vertical concerns, according to the Non-horizontal Merger Guidelines, in order to be able to foreclose competitors, a firm must have a significant degree of market power in at least one of the relevant markets²⁶. In the present case, the Parties submit that SPX neither develop nor owns native codes as these are only owned by the OEMs and SPX is not allowed to use them in the aftermarket. Therefore, given the lack of market power of the merged entity in any potentially relevant product market, it is

²⁴ No figures were provided by the complainant for the market for engine analyzers.

²⁵ In the OEM channel, SPX Service Solutions Business are EUR [XX million] while Bosch sales are EUR [XXX thousand] – the complainant claims that the Parties market shares are [20-30%] and [20-30%] respectively. In the IAM channel, SPX' Service Solution Business are EUR [X million] while Bosch sales are EUR [XX million] – the complainant claims that the Parties' market shares are [20-30%] and [20-30%] respectively.

²⁶ See Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, (OJ C 265, 18.10 2008), paragraphs 23, 95 and 99.

unlikely that the merged will have the ability and/or the incentive to foreclose competitors.

59. With respect to air conditioning services, according to the information submitted by the Parties, such market is very fragmented in the EEA. SPX Service Solutions Business ([10-20%] share of sales in 2011) is one of five leading Air Condition service suppliers in the EEA, the other four being Ecotechnics ([10-20%]), Texa (n [10-20%]), Waeco ([10-20%]) and Luvata ([5-10%]). Bosch ([5-10%] share of sales in 2011) is one of many smaller suppliers including BrainBee ([5-10%]), Spin ([5-10%]), Wigam ([5-10%]), ATT ([0-5%]) and CTR ([0-5%]). These are manufacturer sales shares, which include sales to competitors that rebrand the machines for resale, including Snap-On and Actia (supplied by Ecotechnics), Magneti Marelli, Delphi-Diavia and Denso (supplied by Luvata), Hella (supplied by ATT) and Tecnometer (supplied by Wigam). This further increases competition for Air Condition Services sales in the EEA.
60. Finally, as regards the market for Engine analyzers, the Parties stress the fact that even if this were to be considered as a separate market, the combined market shares would be below or approximately [10-20%] at EEA level with SPX Service Solutions Business only having *de minimis* sales in 2011 (EUR [...] and approximately [...] units) while not being active in the previous years in the EEA. Furthermore, there are many competitors active in this segment such as AVL, Snap-On, Pico and Texa.

Conclusion

61. Against this background, it can be concluded that the Proposed Transaction does not raise any serious doubts with regards to its possible horizontal and non-horizontal dimension.

Non-horizontal relationship between ECU diagnosis/scan tools and electronic control units

62. As described in paragraphs 9-10, electronic control units and ECU diagnosis/scan tools could be considered as neighbouring markets, as they are complementary.
63. With regard to electronic control units, Bosch's activities are limited to engine control units, ABS/ESP control units, on-board body computer/infotainment systems, airbag control units and parking control units. The overall market for electronic control units is highly competitive with players like Continental, Advics/Denso, Bosch, Autoliv, Delphi, TRW, Valeo, Panasonic, Flextronic, Hella, Lear and many others. Bosch estimates its overall market share at [5-10%] worldwide and [10-20%] on an EEA-level with no changes since 2009. With respect to the five electronic control units which Bosch manufactures, the Parties estimate that in the EEA, Bosch could have a [20-30%] market share, and face competition from Continental ([20-30%]), Autoliv ([20-30%]), Advics/Denso ([10-20%]) and TRW ([5-10%]), among others.
64. Since OEMs normally issue a request for quotes for every single new model of vehicle to be introduced into the market, this is very much a bidding market, in which OEMs exercise strong buyer power. Further, OEMS source different parts from different manufacturers by issuing separate requests for quotes for different components. As a result, the bidding process is highly competitive, the vast majority of cases are limited to only one category of electronic control units and all products are tailor-made for each vehicle model of an OEM. Finally, OEMs often choose to select different suppliers for hardware and software of electronic control units.

65. Furthermore, the Parties are of the view that OEMs want to preserve their software and corresponding codes and will thus continue to separately select suppliers of electronic control units (hardware), software for electronic control units as well as diagnostic and testing equipment/devices. Therefore, a selected supplier of electronic control units (hardware) to OEMs will very rarely also be the selected supplier of diagnostic and testing equipment/devices. In addition, ECU diagnosis tools must interface with multiple electronic control units in a vehicle, which have been supplied by different manufacturers. If Bosch supplies one or even several of these electronic control units, that does not confer an advantage in developing ECU diagnosis tools.
66. Finally, the distribution structure via competitive auctions prevents suppliers active in both markets from linking the products with each other and providing combined offers, and even if a player had a very strong position in any of these neighbouring markets, this player would face countervailing buying power from the OEMs.
67. Therefore, it can be concluded that the Proposed Transaction does not raise any serious doubts with regards to its possible non-horizontal dimension.

(6) CONCLUSION

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

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