

Case No COMP/M.7420 - ZF/ TRW

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 12/03/2015

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EUROPEAN COMMISSION

Brussels, 12.3.2015
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Madam(s) and/or Sir(s),

**Subject: Case M.7420 – ZF/ TRW
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

- (1) On 22 January 2015, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (by which ZF Friedrichshafen AG ('ZF', Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over TRW Automotive Holdings Corp. ('TRW', USA), by way of purchase of shares.
- (2) The business activities of the undertakings concerned are:
 - for ZF: worldwide supplier of products for automotive and industrial applications. ZF's automotive business concentrates on powertrain and chassis technology,
 - for TRW: worldwide manufacturer of automotive components focused on active and passive safety technologies³.
- (3) ZF and TRW are designated hereinafter as the "Parties".

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 OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

³ Publication in the Official Journal of the European Union No C 28, 28.01.2015, p. 10.

I. THE PARTIES

- (4) ZF (the "Notifying Party") is active worldwide in the supply of products for automotive and industrial applications. ZF's automotive business concentrates on powertrain and chassis technology. ZF's automotive clients are mainly car manufacturers, also called original equipment manufacturers ("OEMs").
- (5) TRW is active worldwide in the manufacturing and supply of automotive components, with a particular focus on active and passive safety technologies.

II. THE OPERATION AND THE CONCENTRATION

- (6) On 15 September 2014, ZF, TRW and ZF's wholly-owned subsidiary MSNA, Inc. entered into an agreement and plan of merger by which TRW will effectively merge with ZF's fully-owned subsidiary MSNA, Inc.⁴ Accordingly, ZF will acquire sole control over the whole of TRW (the "Notified Transaction"). The Notified Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
- (7) The Commission notes that ZF entered into and closed a related transaction shortly before the Notified Transaction that has removed what otherwise would have led to a horizontal overlap in automotive steering systems between ZF and TRW. This transaction concerns the sale of ZF's 50% stake in the ZF Lenksysteme GmbH ("ZF Lenksysteme"), a joint venture active in the design and manufacture of steering systems, to Bosch.⁵ This transaction was declared compatible with the internal market by the Commission's decision of 24 October 2014.⁶

III. EU DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁷ (ZF: EUR 18 894.50 million; TRW: 14 068.55 EUR million). Each of them has an EU-wide turnover in excess of EUR 250 million (ZF: EUR [...] million; TRW: [...] EUR million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Notified Transaction therefore has an EU dimension.

⁴ Form CO, annex 2 – Agreement and Plan of Merger among TRW Automotive Holdings Corp., ZF Friedrichshafen AG and MSNA, Inc. of 15 September 2014.

⁵ The Notifying Party confirmed that this transaction closed on 9 February 2015. Following closing, there is no longer an overlap between the activities of ZF and TRW in the manufacture of steering-related products.

⁶ Commission decision in case COMP/M.7418 – Bosch / ZF Lenksysteme of 24 October 2014, OJ/C-354.

⁷ 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. COMPETITIVE ASSESSMENT

IV.1. Product market definition

IV.1.1. Horizontal markets

Automotive components

- (9) Both Parties are active in the manufacture and supply of automotive components. The Commission has previously concluded that each individual automotive component constitutes a separate product market.⁸
- (10) The Commission has further segmented these markets between components for light vehicles (under 6 tonnes) (“LV”), namely passenger cars and light commercial vehicles⁹ on one hand, and for heavy commercial vehicles (over 6 tonnes) (“HCV”), namely medium and heavy-duty commercial vehicles such as trucks, buses and trailers, on the other hand.¹⁰ The Commission has still segmented the market between the supply to OEM and original equipment suppliers and OES (“OESs”, i.e. companies active in the supply of branded OEM parts) and the supply to the Independent After Market (“IAM”, covering the supply of replacement components).¹¹
- (11) On the basis of the above distinctions, horizontal overlaps would exist in respect of the Parties' following activities: (i) chassis components to OEMs and OESs as well as to the IAM; (ii) shock absorbers to the IAM; (iii) steering gears and steering pumps to the IAM; (iv) rubber-to-metal components to the IAM; and (v) electronic components.
- (12) The Commission notes that the following horizontal overlaps do not give rise to affected markets: the manufacture and supply of steering pumps sold to the IAM; rubber-to-metal components sold to the IAM; and the manufacture and supply of automotive electronic components. These markets will not be mentioned further in the present decision. The Commission also notes in this regard that ZF has recently sold its rubber-to-metal components business and that its activities are therefore limited to the re-selling (as opposed to manufacturing) of such parts. Also, the Parties' activities in electronics do not overlap in relation to any individual component and are, therefore, complimentary.
- (13) Vertical links would also exist in respect of the Parties' following activities: (i) Transmission Oil Pumps (TRW) and Transmissions (ZF); and (ii) LV tie rods (ZF and TRW) and LV steering systems (TRW).

Chassis components

- (14) Chassis components are components that make up the linkage and suspension for the chassis of a vehicle. There are various types of chassis components, such as:

⁸ COMP/M.6714 – U-Shin / Valeo CAM, para.6.

⁹ COMP/M.4336 – MAN / Scania, para.14.

¹⁰ COMP/M.4456 – Mahle / Dana EPG, para. 13; COMP/M.5799 – Faurecia / Plastal, para. 7, COMP/M.6714 – U-Shin / Valeo CAM, paras.7, 9.

¹¹ COMP/M.4456 – Mahle / Dana EPG, para. 10; COMP/M.5799 – Faurecia / Plastal, para. 7; COMP/M.6714 – U-Shin / Valeo CAM, para. 7.

- a. suspension ball joints: form part of the connection between the wheels of a vehicle and the chassis. Suspension ball joints allow a wheel to pivot during turning, while remaining securely fixed to the vehicle's chassis. Suspension ball joints are connected to control arms, which are connected to the chassis frame.
- b. control arms: are connectors which attach to the rigid chassis frame at one end, and the wheel (via a ball joint) at the other. A conventional vehicle suspension has two control arms with a coil suspension spring sitting between them.
- c. tie rods: are rigid connectors forming the link between the individual wheels and the steering control mechanism. A conventional tie rod is essentially straight, and has ball joints at each end. Tie rods are responsible for transferring steering commands to the wheels, and ensuring the wheels turn together.
- d. stabilizer links: connect wheels on opposite sides of a vehicle and force the wheels and suspension to raise or lower to roughly the same height when cornering. This ensures that the sides of the vehicle move up and down together, instead of independently (i.e., "swaying"), which could lead to the vehicle rolling over.
- e. torque rods: are used to prevent a vehicle's axle (and therefore wheels) from moving forward or backwards relative to the chassis frame during acceleration or braking, respectively. Torque rods, combined with stabilizer links, confine (insofar as possible) the motion of a vehicle's wheels when force (either acceleration, braking or cornering) is applied to the wheel and suspension system.
- f. V-links: perform much the same function as torque rods, ensuring that the vehicle's wheels are not able to move longitudinally (forward and backward) relative to the chassis frame during acceleration and braking. V-links also prevent lateral movement of the axle relative to the chassis. V-links are used primarily with solid rear axles, for instance, in semi-trailer tractors or flatbed vehicles with twin axle assemblies. V-links, in combination with two trailing links/torque rods, assume all axle control functions.
- g. drag links: are a form of steering connection most often found on vehicles with solid axles. The drag link converts the circular motion from the steering shaft into a linear motion to change the angle of the wheels.

(15) Regarding the market for chassis components,¹² the Commission has previously considered that a market exists for "structural chassis assemblies"¹³ within which the following sub-segments can be identified: (i) sub-frames and cross members; (ii) links and control arms; (iii) large frames; and (iv) chassis components which do not belong to other categories. The Commission, however, has ultimately left the exact product market definition open.

(16) The Notifying Party agrees with the distinction between LV and HCV chassis components set out in paragraph 10 above. However, the Notifying Party does not

¹² COMP/M.6207 – Gestamp / TKMF.

¹³ COMP/M.6207 – Gestamp / TKMF, para.11-15.

agree with the distinction between chassis components sold to OEM/OESs and to the IAM, as in most of the cases there is no difference between the LV and HCV chassis components that ZF sells to OEMs/OESs and those it sells to the IAM in terms of design, inputs or manufacturing processes. The Notifying Party also argues that chassis components should not be further subsegmented by each individual component, given the similarities in design and testing processes, basic design, raw materials, techniques and machinery as well as sales and marketing.

- (17) The results of the market investigation indicated that each LV and HCV chassis components (LV: control arms, tie rods, stabiliser links, suspension ball joints; HCV: v-links, torque rods, tie rods, drag links) is a separate product market. Indeed, respondents indicated that there is no substitutability between these products as they are not comparable in terms of price and technical characteristics and they are also often tendered separately.¹⁴
- (18) In addition, bidding data submitted by the Notifying Party indicated that the OEMs organise separate tenders for each component and that these tenders are split even further, namely for LV ball joints into (i) compression ball joints and (ii) cross-axis ball joints; for tie rods into (i) inner and (ii) outer tie rods; for control arms into (i) rear, (ii) front, (iii) upper, and (iv) lower and/or (i) aluminium, (ii) forged steel and (iii) stamped steel control arms. The Commission notes that it cannot be ruled out that such segmentations within each type of chassis component would constitute relevant product markets.
- (19) However, the exact product market definitions can ultimately be left open as the remedies proposed by the Notifying Party remove any serious doubts as to the compatibility of the Notified Transaction with the internal market, on any plausible alternative market definition.
- (20) For the purposes of assessing the Notified Transaction, in light of the results of the market investigation and in line with the Commission's previous decisional practice, the Commission will base its analysis of the Notified Transaction on the narrowest plausible relevant market definitions according to which there is a horizontal overlap between the Parties' activities – namely a separate market for each of the following chassis components: suspension ball joints, control arms, LV tie rods, HCV tie rods, stabilizer links, torque rods, v-links and drag links. These components are further segmented as between supplies to OEMs/OESs on the one hand and supplies to the IAM on the other.

Shock absorbers

- (21) Shock absorbers are devices that help to control the impact and rebound movement of a vehicle's springs and suspension.
- (22) The Commission has previously considered shock absorbers¹⁵ to constitute a separate relevant market, which could possibly be further segmented into sales to OEMs/OESs

¹⁴ Responses to Commission's questionnaire to customers, Q. 4, Q.5, Q.6, Q.7 and Q.8.

¹⁵ Shock absorbers are typically oil, hydraulic fluid or gas-filled piston cylinders which act to dampen the vibrations of the heavy-duty suspension springs which absorb the vibrations and impacts transmitted from the road to the wheels, in order to ensure the wheels maintain contact with the road surface, and that the vehicle does not move excessively.

and to the IAM. The Commission has previously left the product market definition open.¹⁶

- (23) The Notifying Party considers that a distinction could be drawn between assembled suspension struts, shock absorbers and suspension springs. The Notifying Party also claims that shock absorbers may also form part of larger modules such as corner modules or complete axles.
- (24) However, as the Notified Transaction does not give rise to serious doubts as to its compatibility with the internal market even under the narrowest alternative product market definitions, it is not necessary to conclude on the exact scope of the product market for shock absorbers.

Steering system components

- (25) Although with the closing of the sale of the Notifying Party's stake in ZF Lenksysteme, the entire horizontal overlap between the Parties' activities in the manufacture and supply of steering systems has been removed, the Notifying Party will continue to purchase steering gears for resale to the IAM. TRW is, to a small extent, also active in the manufacture and supply of steering gears to the IAM in the EEA.
- (26) Steering gears form the transition between the steering shaft, which connects to the steering wheel, and the steering linkages which connect to the wheels of the vehicle. A gear attached to the steering column interacts with a gear attached to the steering linkage (such as a pitman arm), allowing the rotary force applied by the operator of the steering wheel to be transferred into lateral force applied to the wheels. Steering gears in modern vehicles are typically part of a closed hydraulic system with the gears encased in a pressurised vessel. This allows a drastic reduction in the force required to be applied to the steering wheel by the operator in order to turn the wheels. The hydraulic system within the steering gear is pressurised with a steering pump.
- (27) In its previous decisions, the Commission has left open whether steering system components, including steering gears, constitute separate relevant product markets or whether they are encompassed by a wider steering systems market.¹⁷ For the purpose of the present decision, the precise delineation of the relevant product market can be left open, as the Notified Transaction does not give rise to serious doubts as to its compatibility with the internal market regardless of the precise market definition.

IV.1.2. Vertical markets

Steering systems (downstream market)

- (28) Steering systems are pre-assembled component systems that are part of a vehicles' overall steering capability. Having sold the stake in its steering system joint venture ZF Lenksysteme, ZF is no longer active in the manufacture and supply of steering systems. TRW currently manufactures steering systems.

¹⁶ IV/M.134 – Mannesmann / Boge, para. 9; COMP/M.1959 – Meritor / Arvin, para.9, 10.

¹⁷ IV/M.1291 – Bosch / ZF Friedrichshafen, paragraphs 10 and 12, and; M.5500 – General Motors / Delphi Steering Business, para. 13.

- (29) Both ZF and TRW manufacture and supply tie rods to manufacturers of steering systems, which constitute an input thereto. For the market definition assessment of tie rods please refer to paragraphs 14 to 20 above.
- (30) By the Notified Transaction, the Notifying Party will acquire TRW's steering systems business. This business currently covers the manufacture and supply to OEMs/OESs in the EEA of (i) LV electronic power steering systems; (ii) LV hydraulic power steering systems; and (iii) HCV hydraulic power steering systems. TRW's steering business currently also manufactures and supplies certain steering-related components, including (i) LV steering columns; (ii) LV steering pumps; (iii) LV mechanical steering gears; (iv) HCV steering pumps; (v) HCV steering gears; (vi) HCV steering columns; (vii) HCV intermediate steering shaft; and (viii) HCV column drives.
- (31) The Commission has previously analysed the steering systems market and considered that it could be segmented¹⁸ into: (i) steering columns and intermediate shafts; (ii) steering pumps; (iii) steering hoses; (iv) electronic power steering ("EPS") systems; and (v) half shaft components. The Commission considered the distinction between LV and HCV steering systems, as well as the distinction between sales to OEM/OESs and to the IAM.¹⁹
- (32) The Notifying Party agrees with these segmentations and submits that steering gears would fall within the wider product market for "steering columns and intermediate shafts" as segmented between steering gears for LVs and HCVs, and sales to OEMs/OESs and to the IAM.
- (33) For the purposes of the present case, the exact product market definition for steering systems can be left open as the Notified Transaction does not give rise to serious doubts as to its compatibility with the internal market under any alternative plausible product market definition.

Transmission oil pumps (upstream market)

- (34) Transmission oil pumps regulate the flow of fluids in a transmission and have a significant impact on gear changing quality, efficiency and durability of the transmission.
- (35) TRW currently manufactures and supplies LV transmission oil pumps to manufacturers of LV automatic, automated manual and dual-clutch transmissions. ZF currently purchases LV transmission oil pumps for inclusion in its LV automatic, automated manual and dual-clutch transmissions. TRW does not, however, currently supply ZF with such LV transmission oil pumps, as ZF's LV transmissions use a technology with which TRW's pumps are incompatible. Also, TRW does not manufacture or sell HCV transmission oil pumps.
- (36) The Commission concluded that transmission oils pumps²⁰ constitute a separate product market and considered that a distinction between sales to OEMs and the IAM

¹⁸ COMP/M.5500 – General Motors / Delphi Steering Business, para.12.

¹⁹ COMP/M.5500 – General Motors / Delphi Steering Business, paras. 15, 17.

²⁰ Transmission oil pumps circulate transmission fluid throughout the transmission in order to cool and lubricate the mechanism.

is not relevant in relation to this product, as transmission oil pumps tended to last for the lifetime of the vehicle.²¹ Accordingly, no real IAM would exist for this product.

- (37) The Notifying Party considers that a sub-segmentation between transmission oil pumps using vane pump-technology and those using external gear pump-technology may apply, although it submits that the Notified Transaction does not raise concerns as to its compatibility with the internal market regardless of the precise definition of the relevant product market.
- (38) For the purposes of the present case, the exact product market definition can be left open, as serious doubts do not arise under any product market definition considered on the market for transmission oil pumps.

Transmissions (downstream market)

- (39) Transmissions are part of a vehicle's powertrain, transferring power from the vehicle's engine to its wheels.
- (40) ZF currently manufactures LV automatic, automated manual and dual-clutch transmissions that include transmission oil pumps purchased from third parties. As regards its HCV automatic and automated manual transmissions, ZF designs and manufactures all transmission oil pumps itself.
- (41) In past decisions²² the Commission considered that there are different product markets for automatic and manual transmissions, each of which to be further divided between transmission for LVs and for HCVs.²³ The Commission has previously noted that automatic transmissions are exclusively supplied to OEMs/OESs.²⁴ Similar to transmission oil pumps, a distinction between the OEM/OES and IAM channels therefore does not apply in relation to this product. The Commission ultimately left the exact product market definition open.
- (42) The Notifying Party submits that it is not necessary to reach a definitive view on the relevant product market, given that even on the narrowest basis (assuming separate relevant markets to exist for automatic, automated manual and dual-clutch transmissions) the Notified Transaction would not impede competition within the EEA.
- (43) For the purposes of the present case, the exact delineation of the market for transmissions can be left open as the Notified Transaction does not give rise to serious doubts as to its compatibility with the internal market under any alternative plausible product market definition.

IV.2. Geographic market definition for both horizontal and vertical markets

- (44) The Commission has concluded in past decisions that the geographic scope of the markets for the sale of individual automotive components to the OEMs/OESs market

²¹ COMP/M.6748 – Magna / Ixetic, para.17 – 22.

²² COMP/M.5518 – Fiat / Chrysler; COMP/M.2603 – ZF Friedrichshafen / Mannesmann Sachs; COMP/M.2066 – Dana / Getrag; and IV/M.1368 – Ford / ZF.

²³ COMP/M.2603 – ZF Friedrichshafen / Mannesmann Sachs, para. 15; IV/M.1368 – Ford / ZF, para.12.

²⁴ COMP/M.2603 – ZF Friedrichshafen / Mannesmann Sachs.

is, at least, EEA-wide²⁵ and that the geographic scope of the markets for the sale of individual automotive components to the IAM markets is at least national in scope²⁶, with a possible trend towards an EEA-wide market.

- (45) With regard to sales to OEMs/OESs, the Notifying Party submits that these markets have significantly widened over time, especially due to the ease of transportation (including from countries outside the EEA), and therefore they should be considered global in scope or at least EEA-wide.
- (46) With respect to sales to the IAM, the Notifying Party submits that the scope of the markets should be defined as EEA-wide, since customers are international wholesalers or pan-European buying groups, sourcing at EEA level. In addition, production plants located in a few countries serve the entire EEA.
- (47) With specific regard to chassis components, the results of the market investigation indicate that the markets for HCV chassis components supplied to OEM/OES is EEA-wide. The majority of OEM/OES customers stated that they purchase HCV chassis components at EEA level:²⁷ this is because of the need to meet specific regional requirements and regulations and have suppliers close to their production sites.²⁸ For LV chassis components the results of the market investigation were inconclusive. Although some respondents indicated that they purchase at EEA level in order to have the supplier close to their production site, others purchase at worldwide level and responded that their technical specifications can generally be met regardless of the location of the supplier.²⁹
- (48) As regards the sales to the IAM, the results of the market investigation indicated these would be national in scope.³⁰
- (49) Taking into account both the results of the market investigation and the Commission's past decisions, the competitive assessment below is conducted assuming for all product markets and possible sub-segments that LV and HCV sales to OEM/OES are EEA wide markets and that LV and HCV sales to the IAM are national markets.
- (50) For the purposes of the present case the exact geographic market definition can ultimately be left open as any serious doubts raised by the Notified Transaction are addressed by the commitments proposed by the Notifying Party.

25 COMP/M.1587 – Dana / GKN, para. 16 (despite no direct reference to OEM); COMP/M.1959 – Meritor / Arvin, para. 11; COMP/M.3789 – Johnson Controls / Robert Bosch / Delphi SLI, para. 10; M.5500 – General Motors / Delphi Steering Business, para. 23 (despite no direct reference to OEM); COMP/M.5799 – Faurecia / Plastal, para. 15; COMP/M.6714 – U-Shin / Valeo CAM, para. 32.

26 COMP/M.1959 – Meritor / Arvin, para. 11; COMP/M.3789 – Johnson Controls / Robert Bosch / Delphi SLI, para. 12. COMP/M.2939 – JCI / Bosch / VB Autobatterien JV, p. 6 infra.

27 Responses to Commission's questionnaire to customers, Q. 10.

28 Responses to Commission's questionnaire to customers, Q. 10, Q.12 and Q.13.

29 Responses to Commission's questionnaire to customers, Q. 9 and Q.13.

30 Call between the Commission's services and an IAM customer of 18 November 2014.

IV.3. Competitive assessment - horizontally affected markets

IV.3.1. *On the basis of the abovementioned product and geographic market definitions, the Notified Transaction will lead to horizontally affected markets in the potential sub-segments for: (1) the manufacture and supply of LV and HCV chassis components to OEMs/OESs at EEA level (including for each potential sub-segment for LV suspension ball joints, LV control arms, LV tie rods and LV stabilizer links and HCV torque rods, HCV v-links, HCV tie rods, HCV drag links); (2) the manufacture and supply of LV and HCV chassis components sold to the IAM at national level; (3) the manufacture and supply of LV and HCV shock absorbers sold to the IAM at national level, and; (4) the manufacture and supply of HCV steering gears sold to the IAM in Austria.* The EEA OEM/OES market for LV and HCV chassis components

- (51) The Parties are the number 1 (ZF) and number 2 (TRW) players on each of the alternative overall markets for (i) the manufacture and supply of LV and HCV chassis components to OEMs/OESs in the EEA; (ii) the manufacture and supply of LV chassis components to OEMs/OESs in the EEA; and (iii) the manufacture and supply of HCV chassis components to OEMs/OESs in the EEA.
- (52) As can be seen from the table 1 below, the Parties furthermore are the number 1 (ZF) and number 2 (TRW) players for LV suspension ball joints to OEM/OES; player number 1 and number 4 for LV control arms to OEMs/OESs; and player number 1 and number 5 for LV tie rods and stabilizer links to OEM/OES. Consequently, other competitors have limited market shares, each of them with market shares [0-5]% in most cases and in any case [10-20]%.

Table 1 – OEM/OES sales of LV chassis components in the EEA

LV Chassis Components to OEM/OES in EEA in 2013 (by volume - captive production excluded)	ZF	TRW	Combined
LV Suspension Ball Joints	[60-70]%	[20-30]%	[80-90]%
LV Control Arms	[20-30]%	[5-10]%	[30-40]%
LV Tie Rods	[50-60]%	[0-5]%	[50-60]%
LV Stabilizer Links	[50-60]%	[0-5]%	[50-60]%
All LV Chassis Components	[40-50]%	[5-10]%	[50-60]%

Source: Form CO

- (53) On the EEA market for LV suspension ball joints to OEM/OES, the Parties are players number 1 and number 2 and their combined market share post-transaction will reach almost [90-100]% with an increment of [20-30]%. Other players on this market are THK/Rhythm ([0-5]%), Somic ([0-5]%), CTR ([0-5]%), Musashi ([0-5]%) and Iljin ([0-5]%).

- (54) On the EEA market for LV control arms to OEM/OES, the Parties are players number 1 and number 3 on the market³¹ and their combined market share post-transaction will be [30-40]% with an increment of [5-10]%. Other players on this market include Erdrich Umformtechnik ([10-20]%), Gestamp ([5-10]%), Fuchs ([5-10]%), Benteler ([5-10]%), Georg Fischer ([0-5])%.
- (55) On the EEA market for LV tie rods to OEM/OES, the Parties are players number 1 and number 6 on the market and their combined market share post-transaction will be [50-60]% with an increment of [0-5]%. Other players on this market include JTEKT ([5-10]%), CTR ([5-10]%), Somic ([0-5]%), THK/Rhythm ([0-5]%) and Musashi ([0-5]%).
- (56) On the EEA market for LV stabilizer links to OEM/OES, the Parties are players number 1 and number 5 and their combined market share post-transaction will be [50-60]% with an increment of [0-5]%. Other players on this market include Inauxa ([10-20]%), THK/Rhythm ([10-20]%), HQM Sachsenring ([5-10]%), Mubea ([0-5]%) and Iljin ([0-5]%).

Table 2 – OEM/OES sales of HCV chassis components in the EEA

HCV Chassis Components to OEM/OES in EEA in 2013 (by volume - captive production excluded)	ZF	TRW	Combined
HCV Torque Rods	[60-70]%	[10-20]%	[70-80]%
HCV V-Links	[60-70]%	[5-10]%	[60-70]%
HCV Tie Rods	[40-50]%	[30-40]%	[70-80]%
HCV Drag Links	[40-50]%	[10-20]%	[60-70]%
All HCV Chassis Components	[50-60]%	[10-20]%	[70-80]%

Source: Form CO

- (57) On the various potential sub-segments for HCV, the Parties are players number 1 and number 2 for torque rods, tie rods and drag links, and players number 1 and number 4 for v-links. With the exception of the market for v-links, where the Parties face two competitors, one of which holds [20-30]% of the market. For each of the other markets the remaining competitors has only limited market shares ranging from [0-5]% to [5-10]%.
- (58) On the EEA market for HCV torque rods to OEM/OES, the Parties are players number 1 and number 2 on the market and their combined market share post-transaction will be [70-80]% with an increment of [10-20]%. The Parties competitors on this market include Ditas ([5-10]%), Tenneco ([5-10]%) and Kongsberg ([0-5]%)

31 When considering market shares by value ZF would be player 1 with [20-30]% and TRW player 2 with [10-20]% and competitors would be Erdrich Umformtechnik ([5-10]%), Gestamp ([5-10]%), Fuchs ([5-10]%), Benteler ([5-10]%), Georg Fischer ([0-5]%).

- (59) On the EEA market for HCV V-links to OEM/OES, the Parties are players number 1 and number 4 on the market and their combined market share post-transaction will be [60-70]% with an increment of [5-10].³² Other players on this market include Kongsberg ([20-30]%) and Ditas ([5-10]%).
- (60) On the EEA market for HCV tie rods to OEM/OES, the Parties are players number 1 and number 2 on the market and their combined market share post-transaction will be [70-80]% with an increment of [30-40]%. Other players on this market include Ocap ([0-5]%), Ditas ([0-5]%), Pailton ([0-5]%) and Heyd ([0-5]%).
- (61) On the EEA market for HCV drag links to OEM/OES, the Parties are players number 1 and number 2 on the market and their combined market share post-transaction will be [60-70]% with an increment of [10-20]%. Other players on this market include Ocap ([0-5]%), Ditas ([0-5]%) and Heyd ([0-5]%).

The Notifying Party's arguments

- (62) The Notifying Party submits that the Notified Transaction will not affect competition in the supply of chassis components in the OEM/OES segments in the EEA due to the following factors:
- i. TRW is not ZF's closest competitor, and is a less significant competitive constraint on ZF than might be suggested by the Parties' estimated market shares. With the exception of suspension ball joints, TRW's share of other chassis components is modest and other competitors exert a more significant constraint on ZF than TRW;³³
 - ii. there is a large number of significant EEA-based suppliers of chassis components able to bid credibly against ZF and TRW and in-house suppliers impose a significant constraint on LV component manufacturers;
 - iii. OEMs exercise very substantial buyer power. OEMs are protected by strict contractual provisions on price and other terms, they do not tolerate any attempts of bundling or tying as they would seek alternative sources of supply. OEM procurement involves competitive tendering.

The Commission's assessment

- (63) The Commission concludes that the Notified Transaction will give rise to serious doubts as to its compatibility with the internal market as a result of the horizontal overlap between the Parties activities in the markets for manufacture and supply of LV and HCV chassis components to OEMs/OESs in the EEA, for the reasons set out below.

32 When considering market shares by value ZF would be player 1 with [60-70]% and TRW player 3 with [5-10]% and competitors would be Kongsberg ([20-30]%) and Ditas ([5-10]%).

33 The Parties claim that in the EEA, Gestamp Automoción S.A. ("Gestamp"), Raufoss, and Martinrea Honsel Germany GmbH ("Martinrea Honsel") exert a more significant constraint on ZF than TRW in the supply of control arms for LV; THK, Inauxa, HQM and CTR exert a more significant constraint on ZF than TRW in the supply of stabilizer links for LV; and CTR exerts a more significant constraint on ZF than TRW in the supply of tie rods.

- (64) First the results of the market investigation indicate that, contrary to the Notifying Party's arguments, TRW would actually be ZF's closest competitor.³⁴
- (65) Second, the market investigation indicated that the competitive constraint exercised by other competitors would be much smaller than the Notifying Party's estimates. Specifically, in the case of HCVs chassis components, the Notifying Party would virtually be the only manufacturer available to provide the quality and quantities required by OEMs. In the case of LV chassis components, even though there are other suppliers, these competitors are much smaller than the Notifying Party.
- (66) Third, the market investigation showed that customers are - to a significant extent - dependent on the Parties for the supply of the above mentioned products, for the following reasons:
- a. customers face difficulties in finding other suppliers of equivalent quality to that of the Parties';³⁵
 - b. the majority of respondents to the market investigation stated that over the last 5 years entry was limited for LV (VT2i, a TRW spin-off in France in 2013 and Superalloy Taiwan in 2014) and that no entry is expected in the coming 5 years for LV;³⁶
 - c. the majority of respondents indicated that over the last 5 years there was no entry for HCV. With regard to future entry on the HCV segment, the market investigation was inconclusive but it showed that ZF and TRW will still be indispensable for developing new parts regardless of such entry.³⁷
- (67) Fourth, the market investigation has clearly shown that customers generally do not engage in multi-sourcing for LV or HCV chassis components and that, when they do multisource, this is limited to the Parties.³⁸
- (68) Fifth, the results of the market investigation highlighted that the large majority of customers would not start producing LV nor HCV chassis components even in case of an increase on prices between 5 and 10%.³⁹ Therefore, the Commission considers that in-house production of LV and HCV chassis components does not, contrary to the Parties' arguments, exert a competitive constraint nor is it a potential future competitive constraint on the suppliers of chassis components.
- (69) Sixth, regarding the impact of the transaction, the large majority of customers considered that the transaction will impact their business for LV chassis components⁴⁰ and HCV chassis components.⁴¹ The majority of customers considered that the

³⁴ Responses to Commission's questionnaire to customers, Q. 17 and Q.18.

³⁵ Responses to Commission's questionnaire to customers, Q. 14 and 15.

³⁶ Responses to Commission's questionnaire to customers, Q. 20.

³⁷ Responses to Commission's questionnaire to customers, Q. 19.

³⁸ Responses to Commission's questionnaire to customers, Q. 16.

³⁹ Responses to Commission's questionnaire to customers, Q. 23 and 24.

⁴⁰ Responses to Commission's questionnaire to customers, Q. 25.1.

⁴¹ Responses to Commission's questionnaire to customers, Q. 25.2.

intensity of competition in the OEM/OES market would decrease post-transaction for LV chassis components⁴² and for HCV chassis components.⁴³ The large majority of customers stated that the price level in Europe for automotive chassis components on the OEM/OES market for LV would increase post transaction.⁴⁴ The large majority of customers also stated that the price level in Europe for automotive chassis components on the OEM/OES market for HCV would increase post transaction.⁴⁵

- (70) Finally, in general, the market investigation indicated that the merger of two of the largest companies in the production of LV and HCV chassis components would have a significant negative impact on the market. In particular, customers' replies to the market investigation showed that for LV chassis components the transaction would entail a reduction in the number of players in the market while for HCV chassis components the transaction would lead to a monopolistic situation and would therefore limit competition on the market.⁴⁶
- (71) In conclusion, the Commission considers that the transaction raises serious doubts as to its compatibility with the internal market regarding the EEA OEM/OES market for LV and HCV chassis components, because: (i) TRW and ZF are closest competitors; (ii) customers are - to a significant extent - dependent on the Parties as it is difficult to find other suppliers of products of quality as high as the Parties and entry is limited or non-existent and not expected to occur in the future; (iii) customers do not generally multi-source from suppliers other than the Parties; (iv) customers would not start producing LV nor HCV chassis components in-house; (v) customers considered that the transaction will have a significant negative impact as the intensity of competition will decrease and price level would increase post-transaction.

IV.3.2. The national markets for LV and HCV chassis components sold to the IAM

- (72) As regards the manufacture and supply of **both LV and HCV** chassis components to the IAM, the following national markets are affected by the Notified Transaction: Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, and Sweden.
- (73) As regards the manufacture and supply of **LV** chassis components to the IAM, the following national markets are affected by the Notified Transaction: Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, and Sweden.
- (74) As regards the manufacture and supply of **HCV** chassis components to the IAM, the following national markets are affected by the Notified Transaction: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, and the United Kingdom.

⁴² Responses to Commission's questionnaire to customers, Q. 26.1.

⁴³ Responses to Commission's questionnaire to customers, Q. 26.2.

⁴⁴ Responses to Commission's questionnaire to customers, Q. 27.1.

⁴⁵ Responses to Commission's questionnaire to customers, Q. 27.2.

⁴⁶ Responses to Commission's questionnaire to customers, Q. 31.

- (75) As regards the overall market for LV and HCV chassis components sold to the IAM, in some countries the Parties' combined market shares are [50-60]% with increments ranging from [0-5]% to [20-30]%.⁴⁷ Estonia and Lithuania show the highest combined market shares of respectively [80-90]% and [90-100]%, involving increments of respectively [10-20]% and [30-40]%.
- (76) The Parties' combined market shares in the IAM market for LV chassis components are [30-40]% in most of the EEA countries listed in paragraph 74 above, with increments ranging from [0-5]% to [30-40]%. In particular, Parties have the highest shares in Estonia and Lithuania, with [80-90]% and [90-100]% respectively, and increments of [10-20]% and [30-40]% in each case.
- (77) The Parties' combined market shares in the IAM market for HCV chassis components are [30-40]% in most of the EEA countries listed in paragraph 75 above, with increments ranging from [0-5]% to [30-40]%. The Parties have the highest combined market shares in Italy ([70-80]% with an increment of [20-30]%). On the other hand, a significant number of EEA countries show insignificant increments ranging from [0-5]% to [0-5]%.

The Notifying Party's arguments

- (78) The Notifying Party argues that the Notified Transaction will not give rise to serious doubts as to its compatibility with the internal market regarding chassis components sold to the IAM for the following reasons.
- (79) First, there would be extremely low increments in the Parties' estimated combined market shares. Second, there would continue to be significant competition in these countries, as well as from neighbouring countries and the rest of the EEA. Third, there are large purchasing groups (the four largest being ADI, ATR, GAU, and Temot) that represent distributors throughout the EEA and give them substantial buyer power. Fourth, there are numerous large EEA-based distributors active in numerous member states. Consequently, post-merger, ZF will face significant competitive constraints in the form of strong competition from existing competitors and strong customer groups.

The Commission's assessment

- (80) The Commission considers that the Notified Transaction is unlikely to give rise to serious doubts as to its compatibility with the internal market as a result of the horizontal overlap between the Parties activities in the EEA-wide or national markets for LV and HCV chassis components sold to the IAM.
- (81) First, during the Commission's market investigation, no concerns were raised in relation to the manufacture and supply of chassis components to the IAM in the EEA. Some respondents explained in this regard that the Parties' components sold to the IAM are largely complementary and that, therefore, the Notified Transaction would not impact competition in this sales channel.⁴⁸

⁴⁷ Bulgaria, Croatia, Cyprus, Estonia, Finland, Germany, Greece, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden.

⁴⁸ Responses to Commission's questionnaire to customers, Q. 28.1, and; call between the Commission's services and an IAM customer of 18 November 2014.

- (82) Second, the increment in the share of the Notifying Party in the various national markets for LV and HCV chassis components sold to the IAM brought about by the Notified Transaction is generally low. Although the increment is significant in a limited number of EU member states, the Commission furthermore notes that the Parties' position in the IAM is subject to significant fluctuation. For example, between 2011 and 2012, the Parties' combined share of the manufacture and supply of LV and HCV chassis components sold to the IAM in Sweden decreased from [70-80]% to [50-60]%. Similarly, in Poland, the Parties combined share of the manufacture and supply of LV and HCV chassis components sold to the IAM decreased from [60-70]% to [40-50]% between 2011 and 2013. Such strongly fluctuating market shares run counter to the notion of a structural position held by the Parties on any national market.
- (83) Third, the Commission notes that several large centralised purchasing groups are active across all the national markets for LV and HCV chassis components sold to the IAM. These purchasing groups negotiate terms with automotive component manufacturers such as the Parties on behalf of wholesalers and distributors of spare parts. Given their degree of concentration and geographic coverage, they constitute a significant force in negotiations with manufacturers of automotive spare parts.
- (84) Fourth, the Notifying Party indicated that TRW currently manufactures approximately half of its LV chassis components sold into the IAM channel in the EEA [outside of the EEA] and would therefore not impact the EEA.⁴⁹
- (85) Fifth, several strong competitors that are active across the EEA in the manufacture and supply of LV and HCV chassis components to the IAM remain post-merger. These include Bilstein and Federal Mogul, which companies are active in virtually all affected IAM chassis components markets.⁵⁰
- (86) The Commission considers that these points support the notion that barriers to enter the various national markets for LV and HCV chassis components sold to the IAM are generally low.
- (87) Finally, and in any event, any potential serious doubts to which the Notified Transaction may nonetheless give rise in relation to the horizontal overlap on the national markets for LV and HCV chassis components sold to the IAM will be addressed by the commitments entered into by the Notifying Party; these namely include an IAM chassis components manufacturing capability of OES identical parts (both for the Dačice and Krefeld manufacturing plants (see section V below)). The purchaser of the divestment business will accordingly be free to sell OES identical chassis components into the IAM and, therefore, to continue to compete with the Notifying Party post-merger.

IV.3.3. The national markets for LV and HCV shock absorbers sold to the IAM

- (88) As regards the manufacture and supply of **LV and HCV** shock absorbers to the IAM, the following national markets are affected by the Notified Transaction: Belgium, Cyprus, Estonia, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Romania,

⁴⁹ Form CO, para. 128.

⁵⁰ Form CO, annex 16.

Sweden and the United Kingdom. In each of these markets, the Notified Transaction will give rise to very moderate increments, ranging from [0-5]% to [5-10]%.

- (89) For the manufacture and supply of **LV** shock absorbers to the IAM, the following national markets are affected by the Notified Transaction: Belgium, Cyprus, Estonia, Finland, Germany, Italy, Latvia, Lithuania, Sweden and the United Kingdom. In each of these markets, the Notified Transaction will give rise to moderate increments, ranging from [0-5]% to [5-10]%.
- (90) For the manufacture and supply of **HCV** shock absorbers to the IAM, the following national markets are affected by the Notified Transaction: Belgium, Croatia, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, and Romania. In each of these markets, the Notified Transaction will give rise to increments ranging from [0-5]% to [10-20]%.

The Notifying Party's arguments

- (91) The Notifying Party argues that the Parties have moderate market shares with very low increments and that they will continue to face significant competition from other suppliers in these countries, as well as from neighbouring countries and the rest of the EEA. In addition, there are large distributors active across broad regions, and there are large purchasing groups with significant buyer power in almost every EEA country.

The Commission's assessment

- (92) The Commission considers that the transaction does not raise serious doubts as to its compatibility with the internal market regarding horizontal overlaps in the national markets for LV and HCV shock absorbers sold to the IAM.
- (93) First, even when taking into account the potential narrower segment split by LV/HCV and taking into account a national geographic scope, the increments in the Parties' market shares are low, with the highest Δ HHI amounting to 496.
- (94) Second, several strong competitors that are active across the EEA in the manufacture and supply of LV and HCV chassis components to the IAM remain post-merger. These include Monroe, KYB, Bilstein, Koni and Sabo, which are active in virtually all affected IAM shock absorber markets.⁵¹ This wide geographic coverage of both the Parties and their competitors furthermore points towards wider than national markets for LV and HCV shock absorbers sold to the IAM. On an EEA-wide basis, the Parties individual and combined shares are significantly more limited, with the highest Δ HHI amounting to 149.
- (95) Third and finally, the Commission notes that several large centralised purchasing groups are active across all the national markets for LV and HCV chassis components sold to the IAM. These purchasing groups negotiate terms with automotive component manufacturers such as the Parties on behalf of wholesalers and distributors of spare parts.

⁵¹ Form CO, Annex 16.

IV.3.4. The national markets for HCV steering gears sold to the IAM

- (96) The Parties' activities in the supply of steering systems components to the IAM only give rise to an affected market in relation to HCV steering gears sold to the IAM in Austria. In Austria, the combined market share of the Parties will amount to [30-40]% with TRW's activities adding a negligible increment of [0-5]%.
- (97) Given the moderate market shares and the negligible increment on the IAM market for HCV steering gears, the Commission considers that the Notified Transaction does not raise serious doubts as to its compatibility with the internal market as a result of the horizontal overlap in the IAM market for HCV steering gears in Austria.

Conclusion on horizontal effects

- (98) The Commission considers that the Notified Transaction does not raise serious doubts with regard to the horizontal relations in the national markets for LV and HCV shock absorbers sold to the IAM and steering gears sold to the IAM. However, the Commission considers that the transaction raises serious doubts as to its compatibility with the internal market with regard to the markets for the supply of LV and HCV chassis components to OEM/OES at EEA level. Any potential serious doubts deriving from the national markets for LV and HCV chassis components sold to the IAM will be addressed by the commitments entered into by the Notifying Party in relation to the markets for the supply of LV and HCV components to OEMs/OESs.

Affected vertical markets

Competition effects of a vertical merger

- (99) A vertical merger may potentially give rise, in particular, to two types of competition effects: input foreclosure and customer foreclosure.
- (100) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.⁵² Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In turn, this may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.
- (101) In order for input or customer foreclosure to be a concern, three conditions need to be met post-merger: (i) the merged entity needs to have the ability to foreclose its rivals; (ii) the merged entity needs to have the incentive to foreclose its rivals; and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition on the downstream market (input foreclosure) or on consumers (customer foreclosure). In practice, these factors are often examined together since they are closely intertwined.

⁵² See, for instance 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, p. 6 ('Non-Horizontal Guidelines'), paragraph 31.

IV.4. Competitive assessment - affected vertical markets

(102) The Notified Transaction gives rise to the following vertically affected markets:

i. the upstream EEA-wide market for the manufacture and sale of LV transmission oil pumps (TRW) and the EEA-wide downstream markets for the manufacture and sale of LV automated manual, dual-clutch and automatic transmissions sold to OEMs/OESs;

ii. the upstream EEA-wide market for the manufacture and sale of LV tie rods sold to OEMs/OESs and the downstream EEA-wide market for the manufacture and sale of LV steering systems sold to OEMs/OESs.

Transmission oil pumps (TRW) – Transmissions (ZF)

(103) The Notified Transaction will give rise to vertically affected markets covering the manufacture and supply of LV transmission oil pumps to OEMs/OESs in the EEA and the manufacture and supply of LV automatic, automated manual and dual-clutch transmissions to OEMs/OESs in the EEA. At the upstream level, TRW currently has a market share of around [20-30]% (2013 figure both in terms of volume and value and regardless of whether captive production is taken into account). At the downstream level, ZF currently has a share of between [50-60]% (2013 figure based on volume and excluding captive production) and [70-80]% (2013 figure based on value and excluding captive production) of a market for the manufacture and supply of LV automatic and dual-clutch transmissions.

The Notifying Party's arguments

(104) The Notifying Party argues that the LV transmission oil pumps produced by TRW differ from those used by ZF for inclusion in its LV automated manual, dual-clutch and automatic transmissions. TRW's LV transmission oil pumps would use an external gear technology which is incompatible with ZF's LV automatic, automated manual and dual-clutch transmission and, therefore, must be regarded as belonging to a different product market. The Notifying Party explains in that regard that ZF uses so-called 'vane pumps' in its 8 and 9 speed transmissions in order to achieve a significant reduction in the torque required for operation, something that external gear pumps would be unable to achieve to the same level.

(105) In case TRW's LV transmission oil pumps would belong to a relevant product that is separate from LV transmission oil pumps that use vane pump technology as required by ZF, there would be no vertical relationship between the Parties.

(106) In the event these different technologies were part of an overall "transmission oil pumps" market, the Notifying Party states that it would hold an upstream market share of around [20-30]% (for TRW). Accordingly, the Notifying Party argues that the Notified Transaction would not give rise to a risk of either input foreclosure or customer foreclosure insofar as this vertical overlap is concerned.

(107) The Notifying Party further argues that it would not have the ability to engage in foreclosure as TRW does not, currently, manufacture vane-pump technology transmission oil pumps, compatible with ZF's transmissions. The Notifying Party would therefore face a significant lead time (amounting to at least 22 months) for the development of such compatible transmission oil pumps, required for ZF to switch its sourcing from external suppliers to TRW. Besides the need to develop the vane-pump

technology in-house, ZF would also be required to go through a lengthy testing process following a change of supplier, both in-house as well as with the relevant OEM customer(s). Also, some of the existing supply agreements entered into between ZF and third-party transmission oil pump suppliers would, in the case of an attempted foreclosure, continue to constitute a financial cost (in the form of required payments of minimum guarantee-clauses or otherwise).

The Commission's assessment

- (108) Notwithstanding the fact that TRW does not, currently, manufacture transmission oil pumps that are compatible with ZF's LV transmissions (i.e. those using vane technology), the Commission considers that the Parties' respective activities in transmission oil pumps and transmission do give rise to a vertically affected market. First, the cost for TRW to develop vane technology transmission oil pumps is highly limited, amounting to only EUR [...]. The Parties in this regard acknowledge that TRW could start producing such pumps. Second, ZF currently competes at the downstream level with manufacturers of LV transmissions that do incorporate TRW's transmission oil pumps. Third and finally, the Commission has previously established that transmission oil pumps constitute a separate relevant product market, without considering a further delineation based on pump technology.⁵³

Input foreclosure

- (109) First, the Commission notes that TRW currently has a market share of around [20-30]% (in value) in the market for the manufacture and supply of LV transmission oil pumps to OEMs/OESs in the EEA. Such share is unlikely to confer upon the merged entity a significant degree of upstream market power required for it to be able to significantly affect the availability of LV transmission oil pumps. The Commission also notes that besides TRW, several other suppliers of LV transmission oil pumps are active in the EEA that could replace TRW in the event of an attempted input foreclosure, namely: SHW, Ixetic (Magna), KPSG, GPM, Marzocchi, Pompe, Caproni, FTE Automotive and Mahle.
- (110) Second, based on data on the costs of transmission oil pumps and sales of transmissions provided by the Notifying Party, LV transmission oil pumps represent less than [0-5]% of the price of, for example, LV automatic transmissions and they do not, therefore, constitute a significant cost factor that could have a negative impact on the propositions of the merged entity's downstream competitors. In this regard, the Commission notes that the Notifying Party similarly submits that transmission oil pumps generally account for only [0-5]% of the overall cost of a transmission.
- (111) Third, ZF currently relies fully on LV transmission oil pump suppliers other than TRW given that the latter's LV transmission oil pumps use a technology that is incompatible with ZF's LV transmissions. Given that the Notifying Party explained that the merged entity would face an absolute minimum lead time of [18-24] months to have TRW develop LV transmission oil pumps that are compatible with ZF's LV transmissions, the latter would itself continue to rely on third-party manufacturers of LV transmission oil pumps during a significant period of time after any attempted foreclosure of access to TRW's transmission oil pumps. Accordingly, ZF would not, during this transitional period, be able to benefit from the foreclosure at the

⁵³ COMP/M.6748 – Magna / Ixetic.

downstream level due to it not yet being able to internalise the cost of TRW's LV transmission oil pumps.

- (112) Finally, save for one OEM customer of LV transmissions, none of the respondents to the Commission's market investigation – including TRW's competing oil pump suppliers and ZF's customers for LV transmissions – expect the vertical integration of these activities to have any impact on either the supply of LV transmission oil pumps or on the price of LV automated manual and/or automatic transmissions.⁵⁴ This one respondent moreover considered the vertical integration of TRW's transmission oil pump capability with ZF's automatic transmission business to possibly be pro-competitive, as it could provide a scope for cost reductions.⁵⁵

Customer foreclosure

- (113) First, the Commission notes that TRW does not currently produce LV transmission oil pumps that are compatible with ZF's LV automatic, automated manual and dual-clutch transmissions. Therefore, the merged entity cannot immediately switch its sourcing of LV transmission oil pumps to TRW. Accordingly, ZF will not be able to immediately restrict access for suppliers of LV transmission oil pumps to a significant downstream customer base, as is required by the Commission's non-horizontal guidelines for a vertical merger to be able to affect upstream competitors.⁵⁶
- (114) Second, based on the information provided by the Notifying Party, the merged entity would face an absolute minimum lead time of at least [18-24] months for the development of LV transmission oil pumps that are compatible with ZF's LV transmissions (i.e. LV transmission oil pumps using vane pump-technology, rather than external gear-technology). This lead time includes the testing and certification exercise that ZF's OEM customers would require for allowing any change of sub-supplier under their current (mainly) open-ended contracts with ZF for the supply of LV transmission oil pumps. Given the involvement of the OEM customers, the cost that the latter will face in testing and certifying a new sub-supplier for transmission oil pumps, and given the significant lead time required, the ability of ZF to engage in customer foreclosure vis-à-vis its suppliers of LV transmission oil pumps with the aim of increasing the prices of its LV automatic transmission is, therefore, limited.
- (115) Third, as already mentioned above, LV transmission oil pumps do not constitute a significant cost factor relative to the price of LV transmissions and are, therefore, unlikely to allow ZF to increase the prices of its LV automatic transmissions, rendering any attempted customer foreclosure devoid of purpose.
- (116) Finally, as already mentioned above, no issues were raised in this respect during the Commission's market investigation, neither by TRW's competing oil pump suppliers, nor by ZF's customers for LV transmissions.

⁵⁴ Responses to Commission's questionnaire Q1 – Customers – Automotive Chassis Components (OEM/OES), Q. 29 and Q. 30.

⁵⁵ Responses to Commission's questionnaire Q1 – Customers – Automotive Chassis Components (OEM/OES), Q. 29.1

⁵⁶ Non-Horizontal Guidelines, para. 60.

Conclusion

- (117) In light of the above and on the basis of the evidence before it, the Commission considers that the Notified Transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of the vertical link between TRW's upstream activities involving the manufacture and supply of LV transmission oil pumps to OEMs/OESs in the EEA and ZF's downstream activities involving the manufacture and supply of LV automatic, automated manual and dual-clutch transmissions to OEMs/OESs in the EEA.

LV tie rods (ZF and TRW) – LV steering systems (TRW)

- (118) LV chassis components are an input to LV steering systems. Based on information provided by the Notifying Party it however appears that, currently, ZF's LV tie rod is the only product category of which a significant quantity is supplied to third-party LV steering systems manufacturers in the EEA. Indeed, ZF would currently supply around [80-90]% (both in terms of value and volume) of its LV tie rods sold in the EEA as a Tier 2⁵⁷ supplier to LV steering systems manufacturers, rather than directly to OEMs/OESs.⁵⁸
- (119) At the narrowest possible product market definition, the Notified Transaction will therefore give rise to vertically affected markets covering the manufacture and supply of LV tie rods sold into the OEM/OES channel in the EEA and the manufacture and supply of LV hydraulic and electronic power steering systems sold into the OEM/OES channel in the EEA. Both ZF and TRW are currently active on the upstream level in the manufacture and supply of LV tie rods, where they hold a combined market share of between [50-60]% (2013 figure based on volume and excluding captive production) and [70-80]% (2013 figure based on value and excluding captive production). TRW is currently active on the downstream level respectively in the manufacture and supply of LV hydraulic power steering systems to OEMs/OESs in the EEA and the manufacture and supply of LV electronic power steering systems to OEMs/OESs in the EEA where it holds respective market shares of [10-20]% (LV hydraulic power steering systems, 2013 figure based on volume) and [10-20]% (LV electronic power steering systems, 2013 figure based on volume).

The Notifying Party's arguments

- (120) The Notifying Party argues that the vertical link between the manufacture and supply of LV tie rods to OEMs/OESs and the manufacture and supply of LV steering systems will not raise any competitive concerns, because it will neither have the ability nor the incentive to engage in input foreclosure in relation to LV tie rods, for the following reasons

⁵⁷ For each specific new vehicle ('project') of an OEM car manufacturer, both Tier 1 and Tier 2 automotive components suppliers are active. Tier 1 suppliers will be the winner of the OEM's tender for a specific component or system. Tier 2 suppliers are those that supply automotive components to Tier 1 suppliers, for inclusion into a bigger assembly ('system') of automotive components. In some cases, the OEM car manufacturer will, when awarding a specific project to a Tier 1 supplier, also identify which Tier 2 suppliers are to be used by the Tier 1 supplier at hand. This process is known as 'directed buying' by OEM car manufacturers. Automotive component suppliers often act interchangeably as a Tier 1 and Tier 2 supplier for different components.

⁵⁸ Form CO, Annex 27.

- (121) First, the Notifying Party explains that any attempted foreclosure would risk its entire business with the OEM car manufacturers, as the latter might retaliate for any disruption caused to their production by any attempted foreclosure by the Notifying Party of LV steering suppliers from LV tie rods.
- (122) Second, any attempted full internalisation of the supply of LV tie rods within the Notifying Party would free up a third-party capacity of [...] LV tie rods that are currently supplied by the TRW Divestment Business (part of the commitments that the Notifying Party has entered into) to TRW's steering business. This capacity would exceed the demand of competing LV steering manufacturers currently supplied by the Notifying Party and would therefore render any attempted input foreclosure strategy ineffective.
- (123) Third, the Notifying Party states that over 50% of its LV tie rods are supplied on "End-of-Lifetime" contracts, which would mean that it faces significant penalties in case of an early termination of supply. This would limit the likelihood that the merged entity will attempt to engage in input foreclosure in relation to LV tie rods.
- (124) Fourth, the Notifying Party claims that it did not pursue an input foreclosure strategy when it still owned ZF Lenksysteme, while the latter's shares of the relevant downstream markets for the manufacture and supply of LV steering systems exceeded those held by TRW's LV steering business. Accordingly, the Notifying Party argues that the additional profit that it could earn from pursuing an input foreclosure strategy would arguably be less than was the case prior to the Notified Transaction when ZF jointly controlled ZF Lenksysteme.
- (125) Fifth and finally, the Notifying Party would require a significant period of time for implementing any foreclosure strategy in relation to LV tie rods (of between 12 and 24 months), which would involve a high risk of penalties under its agreements with customers and likely lost investments that would further limit the likelihood of the merged entity engaging in any kind of foreclosure strategy in relation to LV tie rods..

The Commission's assessment

Input foreclosure

- (126) First, the Commission notes that the Notifying Party will, by the proposed commitments below, divest TRW's chassis components business to a suitable third-party purchaser. This means that in case the merged entity were to attempt to foreclose its steering competitors' access to LV tie rods by fully vertically integrating ZF's LV tie rod business with TRW's steering business, the divested chassis components business would cease to supply TRW's steering business. This would accordingly free up a third-party capacity of around [...] million LV tie rods⁵⁹, which exceeds the demand for LV tie rods that the merged entity could foreclose. Indeed, information provided by the Notifying Party shows that ZF currently supplies only [...] million LV tie rods to third-party manufacturers of LV steering systems. Accordingly, post-divestiture, the merged entity will not have the ability to engage in input foreclosure in relation to LV tie rods supplied to OEMs/OESs in the EEA.

⁵⁹ According to the LV tie rod intra-company sales figures for TRW's Dačice and Krefeld plants, contained in annex 5.8 to the commitments.

- (127) Second, the merged entity will not have the ability to immediately cease supplying its current customers of LV tie rods, as the Notifying Party estimates that it would take up to 2 years to fully integrate its LV tie rod production with TRW's LV steering business. This significant lead time during which a vertical integration would gradually occur limits the merged entity's ability to engage in input foreclosure, as it would allow its competitors significant time to seek and/or develop alternative supply.
- (128) Third, due to the high proportion of ZF's LV tie rods that are supplied on "End-of-Lifetime" contracts, ZF would face significant penalties if it sought to terminate the supply of LV tie rods prior to the end of these contracts. Such financial penalties further limit the likelihood that the merged entity will attempt to engage in input foreclosure in relation to LV tie rods.
- (129) Fourth, the Commission notes that prior to the Notified Transaction, ZF had a 50% stake in ZF Lenksysteme, a competitor to TRW's steering business. In 2013, ZF Lenksysteme accounted for market shares of [20-30]% and [20-30]% for the respective markets for LV hydraulic power steering systems supplied to OEMs/OESs in the EEA and for LV electronic power steering systems supplied to OEMs/OESs in the EEA. As mentioned above, TRW held respective shares of [10-20]% and [10-20]% of these markets in 2013. The 50% interest that the Notifying Party held, pre-merger, in the market shares of ZF Lenksysteme are therefore similar to the 100% interest that it will hold in the market shares of TRW steering. Regardless of the pre-existing degree of vertical integration that ZF had via its joint venture ZF Lenksysteme, the Notifying Party sold a significant amount of its LV tie rods to competing producers of LV steering systems (i.e. around [...]% of ZF's total sales of LV tie rods, or around [...]% of ZF's total sales of LV tie rods to LV steering system suppliers⁶⁰). The fact that the Notifying Party appears not to have engaged in input foreclosure in relation to LV tie rods regardless of it being vertically integrated with ZF Lenksysteme further supports the conclusion that the merged entity is unlikely to do so in the future.
- (130) Finally, no concerns were raised during the Commission's market investigation in relation to this vertical overlap involving LV tie rods and LV steering systems.⁶¹

Customer foreclosure

- (131) The Commission notes that the merged entity will hold a limited share of the markets for the manufacture and supply of LV hydraulic and electronic power steering systems. In line with the Commission's non-horizontal guidelines, these market shares cannot be considered to confer upon the merged entity an ability to engage in customer foreclosure as they imply that a sufficiently large customer base that is likely to turn to independent suppliers will remain post-merger. Such alternative customers include ZF Lenksysteme (holding respective market shares of [20-30]% and of [20-30]% for LV hydraulic and electronic power steering systems supplied to OEMs/OESs in the EEA), JTEKT Corporation (holding respective market shares of [20-30]% and [10-20]% of the afore markets), and Thyssenkrupp Presta Steering (holding respective market shares of [10-20]% and [5-10]% of the afore markets).

⁶⁰ Form CO, annex 27.

⁶¹ Responses to request for information of 23 January 2015 sent under Article 11 of the Merger Regulation to LV steering systems manufacturers, and; Commission's questionnaire Q1 – Customers – Automotive Chassis Components (OEM/OES).

Conclusion

(132) In light of the above, and on the basis of the information before it, the Commission considers that the Notified Transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of the vertical overlap between ZF's and TRW's upstream activities involving the manufacture and supply of LV tie rods to OEMs/OESs in the EEA and TRW's downstream activities involving the manufacture and supply of LV steering systems to OEMs/OESs in the EEA. .

IV.5. General conclusion on the competitive assessment

(133) In light of the above, and on the basis of the information before it, the Commission considers that the transaction raises serious doubts as to its compatibility with the internal market with regard to the markets for the manufacture and supply of LV and HCV chassis components to OEM/OES at EEA level.

V. PROPOSED REMEDIES

(134) In order to render the Notified Transaction compatible with the internal market, the Notifying Party has modified the Notified Transaction by entering into the following commitments under Article 6(2) of the Merger Regulation, which are annexed to this decision and form an integral part thereof (the "Commitments"⁶²).

(135) Pursuant to the Commitments, the Notifying Party commits to divest TRW's businesses in the design, manufacturing and sale of chassis components (including suspension ball joints, control arms, tie rods, stabilizer links, torque rods, v-links and drag links) for OEM and OES customers in the EEA to an independent and unconnected party (the "TRW Divestment Business").

(136) The TRW Divestment Business includes the following:

(i) Two manufacturing plants located respectively in the Czech Republic (Dačice, which includes the chassis components plant and a regional chassis component technical support centre) and Germany (Krefeld) (together the "Plants"). The premises and all machinery used in the Plants will also be included in the TRW Divestment Business. The Plants cover both LV and HCV chassis components.

(ii) The chassis components division of TRW's R&D facility, which is currently based in [Germany]. The chassis components R&D capability covers the development of new designs (included related single components), the development of the production process steps and production parameters, the provision of engineering services to the Krefeld plant, and teams for testing and validation, advance manufacturing engineering, engineering, prototypes, purchasing, sales and for marketing. The Notifying Party commits to create suitable, separated premises for the [German Research] Facility within the existing TRW [Germany] site, or to procure a suitable site within a 40 km radius of the current TRW [Germany] site, until the R&D Facility is relocated to a permanent site selected by the purchaser.

(iii) The ownership of and right to use the active worldwide patents listed in Annex 5.1 of the Commitments for the entire life of each of the individual patents and the

⁶² The Notifying Party submitted the commitments on 19 February 2015.

know-how for the operation of the production lines, including the know-how regarding ball joints.

(iv) All licences, permits and authorisations necessary to operate the Plants, develop, market, process and sell the products and, in general, to carry on the TRW Divestment Business.

(v) The transfer of all the testing, production assets and contracts which are currently owned by the TRW Divestment Business, in particular: (i) production and engineering support, (ii) advertising and communication if required by the purchaser, (iii) relevant detail for customers and their lists and supplier lists.

(vi) The transfer of key personnel, composed of: (i) 1 operations director based in North America who will also serve as hold-separate manager, (ii) 1 finance director based in North America (iii) 12 key individuals for Dačice; (iv) 9 key individuals for Krefeld and (v) 5 key commercial executives for the R&D capability.

(vii) The transfer of 2 sales engineers based in [...], France, and one sales engineer based in [...], Italy, as well as the following function groups that together cover all of the [...] and [...] persons that are currently employed respectively at the Dačice and Krefeld plants: Management, Finance Controlling, HR, Logistic, Shipping/Receiving, Maintenance, Process Engineering, Production, NPI, Quality, Tool Store, Works Council.

(viii) The customer list, sales, marketing and promotional information as well as the contracts and purchase agreements. In addition, the Notifying Party commits to provide the relevant details of the customer base for the products manufactured and commercialised by the TRW Divestment Business during the 12 month period preceding the date of adoption of the Commission's decision.

(xi) The supplier list and all current supply agreements for the inputs to chassis components for HCV and LV as well as the details on the supplier base of the TRW Divestment Business during the 12 month period preceding the date of adoption of the Commission's decision.

(x) Transitional services on a reasonable cost-plus basis to be agreed with the purchaser, to facilitate the transfer of the TRW EEA Divestment Business for up to a period of [...] months, if such services cannot be immediately provided either by the purchaser of the TRW Divestment Business or an external service provider.

(137) In addition, the Notifying Party has entered into related commitments, inter alia regarding the separation of the TRW Divestment Business from its retained businesses, the preservation of the viability, marketability and competitiveness of the TRW Divestment Business in the period prior to the transfer of the TRW Divestment Business to the purchaser, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

VI. ASSESSMENT OF THE PROPOSED REMEDIES

VI.1. Framework for the Commission's Assessment of the Commitments

(138) Where a notified concentration raises serious doubts as to its compatibility with the internal market, the Parties may modify the notified concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to

having it declared compatible with the internal market pursuant to Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

- (139) As set out in the Commission Notice on Remedies,⁶³ commitments have to eliminate the Commission's serious doubts entirely, they have to be comprehensive and effective from all points of view and they must be capable of being implemented effectively within a short period of time, as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.⁶⁴
- (140) In assessing whether or not commitments will restore effective competition, the Commission considers their type, scale and scope by reference to the structure and the particular characteristics of the market in which the Commission has identified serious doubts as to the compatibility of the notified concentration with the internal market.⁶⁵
- (141) Divestiture commitments are the best way to eliminate serious doubts resulting from horizontal overlaps of the Parties' activities.⁶⁶ The divested activities must consist of a viable business that, if operated by a suitable Purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern.⁶⁷
- (142) The business to be divested must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness. Personnel and assets which are currently shared between the business to be divested and other businesses of the Parties, but which contribute to the operation of the business or which are necessary to ensure its viability and competitiveness, must also be included. Otherwise, the viability and competitiveness of the business to be divested would be endangered. Therefore, the business to be divested must contain the personnel providing essential functions for the business, at least in a sufficient proportion to meet the on-going needs of the business to be divested.⁶⁸
- (143) Furthermore, the intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable Purchaser with proven relevant expertise and ability to maintain and develop the business to be divested as a viable and active competitive undertaking.

⁶³ Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01), (the "Commission Notice on Remedies").

⁶⁴ Commission Notice on Remedies, paragraph 9.

⁶⁵ Commission Notice on Remedies, paragraph 12.

⁶⁶ Commission Notice on Remedies, paragraph 17.

⁶⁷ Commission Notice on Remedies, paragraph 23.

⁶⁸ Commission Notice on Remedies, paragraphs 25 and 26.

VI.2. The Commission's market test and assessment of the Commitments

VI.2.1. The results of the market test

(144) The Commission launched a market test of the Commitments on 20.02.2015. Taken on a whole, save for the three elements discussed below at para. 122, the outcome of the market test was positive, for the reasons set out below:

- a. The majority of the respondents to the market test stated that the Commitments would be adequate to maintain sufficient competition in the various markets involving the manufacture and supply of LV and HCV chassis components to OEMs/OESs in the EEA;
- b. The majority of respondents to the market test considered that the scale and scope of the TRW Divestment Business is sufficient to ensure its immediate and future viability and competitiveness on the various markets for the manufacture and supply of chassis components to OEMs/OESs in the EEA,⁶⁹ and;
- c. The majority of respondents to the market test considered that the TRW Divestment Business constitutes an attractive offer for a suitable purchaser.⁷⁰

(145) The market test underlined three important elements:

- a. The purchaser should already be active in the manufacture and supply of automotive components sold into the OEM/OES channel in order to ensure the viability and competitiveness of the TRW Divestment Business.⁷¹ The large majority of respondents to the Commission's market test also explicitly excluded OEM car manufacturers and purely financial investors as potentially suitable purchasers of the TRW Divestment Business;⁷²
- b. Some respondents also stated that a wider scale of the TRW Divestment Business would enhance its ability to be operated as a fully standalone business and its viability. This concerns notably the US assets that are offered for divestment in parallel to the European business;⁷³ and
- c. A small minority of respondents stated that the viability of the TRW Divestment Business could be impaired by the inability for the purchaser thereof to use the brands and/or logos that are currently

⁶⁹ Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, questions 3 and 6.

⁷⁰ Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, question 20.

⁷¹ Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, questions 3, 6, 21, 22 and 23.

⁷² Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, questions 22 and 23.

⁷³ Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, questions 3, 6, 21, 22 and 23.

held by TRW (or the right to sell products under TRW's name) in the IAM channel.⁷⁴

VI.3. Assessment of viability of the Commitments

- (146) The Commission considers that the Commitments are sufficiently comprehensive and clear-cut to allow an experienced player in the automotive sector to enter, and compete in, the various markets for the manufacture and supply of chassis components in the EEA.
- (147) First, the Commitments include two large manufacturing plants that should offer scope for expansion.⁷⁵ This was confirmed by the large majority of respondents to the market test.⁷⁶
- (148) Second, the Commitments include (i) the ownership and right to use of any IP rights that are currently used by TRW in relation to the manufacture and supply of chassis components, (ii) current customer and supply contracts, (iii) know-how, including for ball joints, (iv) required transitional services, (v) all relevant licenses and permits, and (vi) all testing and production assets. The Commission considers that this combination of tangible and intangible assets is sufficiently comprehensive to ensure the immediate viability of the TRW Divestment Business. This conclusion was also supported by the large majority of respondents to the Commission's market test.⁷⁷
- (149) Third, the Commitments include the transfer of TRW's entire existing chassis components R&D capability to the purchaser of the TRW Divestment Business. An effective R&D capability is crucial to maintaining business with the large OEM car manufacturers. The Commission therefore considers that the obligation for the Notifying Party to ensure the transfer of a substantial number of TRW's existing R&D personnel is important. In this context, the Commission notes that the large majority of respondents to the Commission's market test considered the key personnel identified in Table 4 of the Commitments sufficient to ensure the viability and competitiveness of the TRW Divestment Business.⁷⁸
- (150) Fourth, the Dačice and Krefeld manufacturing plants currently produce some volumes of IAM chassis components that are sold [...]. This IAM capability can be used by the purchaser of the TRW Divestment Business to enter the various markets in the EEA for the manufacture and supply of chassis components to the IAM with original OES parts (so-called 'ident parts'), as the Commitments leave the purchaser free to discontinue the existing supply relationship with TRW.⁷⁹ The purchaser of the TRW Divestment Business will be able to supplement these TRW ident parts with at least

⁷⁴ Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, questions 11 and 21.

⁷⁵ Form RM, page 8 and 10.

⁷⁶ Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, questions 7 and 8.

⁷⁷ Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, questions 7-19.

⁷⁸ Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, questions 15 and 16.

⁷⁹ Form RM, footnotes 7 and 12.

90% of all IAM chassis components required by IAM customers, by turning to third-party manufacturers that engage in the reverse engineering of original automotive components manufactured by OEMs or Tier 1 suppliers (including non-ident chassis components that TRW developed specifically for sale to the IAM).⁸⁰ Indeed, the Parties indicate that neither TRW nor the third-party manufacturers hold any IPRs over the design of the original automotive components that are subject to this reverse engineering, leaving the purchaser of the TRW Divestment Business free to source reverse engineered IAM chassis components or to engage in the same reverse engineering process itself. Finally, in order to facilitate the setting up of an IAM business by the purchaser of the TRW Divestment Business, the Notifying Party is willing to provide it with a complete list, including contact details, of all third party suppliers used by TRW and ZF and the products they supply to TRW and ZF.⁸¹ The ability to enter the various national markets for the manufacture and supply of LV and HCV chassis components to the IAM in the EEA constitutes a business opportunity that enhances the viability of the TRW Divestment Business. An IAM presence is not, however, required to win business under requests for quotations for chassis components that are used by OEMs/OESs.⁸²

(151) Fifth, the Commission notes that the TRW Divestment Business seems profitable with a positive normalized EBITDA and profit margin for 2013 and 2014, which are furthermore forecasted to increase [...] and beyond.⁸³

(152) As mentioned above, the majority of respondents to the Commission's market test of the Commitments indicated that the identity of the purchaser of the TRW Divestment Business is important to ensuring viability. In this regard, the Commission notes that, when assessing any proposed purchaser of the TRW Divestment Business, paragraph 17 of the Commitments requires that the Commission establishes that the purchaser has (i) the financial resources, (ii) the proven expertise, and (iii) the incentive to maintain and develop the TRW Divestment Business as a viable and competitive force in competition with the Notifying Party and other competitors.

(153) In light of the results of the market test of the Commitments, the Commission will therefore, when assessing the suitability of the purchaser of the TRW Divestment Business, take into account whether: (i) the purchaser has sufficient knowledge of – and a proven track record in – the automotive component sector, and (ii) the purchaser's existing automotive component business(es) will offer sufficient scope to ensure the continued and future viability of the TRW Divestment Business. In this regard, the Commission considers that the purchaser must demonstrate the ability to effectively operate the TRW Divestment Business as a viable and competitive force in the relevant EEA OEM/OES chassis components markets on the basis of an existing presence and proven track record in the automotive components business (not necessarily in the EEA).

(154) In light of the importance of brand loyalty in the sale of chassis components to the IAM⁸⁴, the Commission considers that, in case the Notifying Party proposes a

⁸⁰ Parties' response to the Commission's request for information of 10 March 2015, question 2.

⁸¹ Parties' response to the Commission's request for information of 10 March 2015, question 2.

⁸² Parties' response to the Commission's request for information of 10 March 2015, question 1.

⁸³ Form RM, para. 66, and; Parties' response to the Commission's request for information of 9 March 2015, question 1.

purchaser with no presence or experience in the automotive component business, it would be important for the viability of the TRW Divestment Business to establish an IAM presence in the supply of LV and HCV chassis components within the EEA. Accordingly, the ability of the purchaser of the TRW Divestment Business to sell into the IAM will be a relevant factor in assessing its suitability.

- (155) Taking into account the reasons set out above, the Commission considers that the Commitments are suitable and sufficient to remedy the serious doubts raised by the Notified Transaction in the various markets involving the manufacture and supply of LV and HCV chassis components sold to the OEM/OES and IAM channels in the EEA.

VI.4. Conclusion on the Commitments

- (156) As described above, the Commitments consist in the divestiture of the Plants, a R&D facility and all associated (tangible and intangible) assets, licenses and contracts. This is therefore a structural measure, suitable to remove the serious doubts identified by the Commission, as it will remove the entire overlap between the Parties' activities in the manufacture and supply of LV and HCV chassis components to OEMs/OESs in the EEA. The Commitments will at the same time allow a third-party with a proven track record in the automotive sector to enter the market for the manufacture and supply of LV and HCV chassis components to OEMs/OESs in the EEA. The third party will benefit from existing customer contracts as well as from important R&D and manufacturing capabilities that should offer scope for expansion.⁸⁵ Therefore, the Commitments keep the pre-merger structure of the markets for the manufacture and supply of LV and HCV chassis components to OEMs/OESs in the EEA.

- (157) In light of all of the foregoing, and on the basis of the evidence before it, the Commission considers that the Commitments are suitable and sufficient to remove all serious doubts as to the compatibility of the Notified Transaction with the internal market and with the functioning of the EEA agreement in the various markets involving the manufacture and supply of LV and HCV chassis components sold to the OEM/OES and IAM channels in the EEA.

VII. CONDITIONS AND OBLIGATIONS

- (158) Pursuant to the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- (159) The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market and the EEA Agreement no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may

⁸⁴ Form CO, para. 639.

⁸⁵ Responses to Commission's questionnaire Q2_Questionnaire to Competitors and Customers on commitments offered by ZF Friedrichshafen AG of 20 February 2015, questions 7 and 8.

revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

- (160) In accordance with the basic distinction between conditions and obligations, the decision in this case is conditional on full compliance with the requirements set out in Section B of the Commitments, which constitute conditions. The remaining requirements set out in the other Sections of the Commitments are considered to constitute obligations.
- (161) The full text of the Commitments is annexed to this Decision as Annex I and forms an integral part thereof.

VIII. CONCLUSION

- (162) For the above reasons, the Commission has decided not to oppose the Notified Transaction as modified by the Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the Commitments annexed to the present decision and with the obligations contained in the other sections of the said Commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission

COMP/M.7420 - ZF/TRW

**COMMITMENTS BY
ZF FRIEDRICHSHAFEN AG TO
THE EUROPEAN COMMISSION**

19 February 2015

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COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the “**Merger Regulation**”), ZF Friedrichshafen AG (the “**Notifying Party**”) hereby enters into the following Commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the Notifying Party’s proposed acquisition of sole control of TRW Automotive Holdings Corp. (“**TRW**” and, together with the Notifying Party, the “**Parties**”) (the “**Concentration**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004 (the “**Remedies Notice**”).

Section A. DEFINITIONS

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Notifying Party and/or by the ultimate parents of the Notifying Party, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the TRW Divestment Business as indicated in Section B, Paragraphs 6(a), (b) and (c) of these Commitments and described more in detail in the Schedule.

Chassis Components: the chassis components described in section 5.2.1 of the Form CO in which there is horizontal overlap between the Parties, as specified in the Form CO. TRW refers to Chassis Components as “linkage and suspension” components.

Closing: the transfer of the legal title to the TRW Divestment Business to the Purchaser.

Closing Period: the period ending on the later of (i) [...] months from the approval of the Purchaser and the terms of sale by the Commission; and (ii) [...] hours after the time that all merger control approvals required for the sale of the TRW Divestment Business to the Purchaser have been granted.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is: (i) not in the public domain; or (ii) not reasonably necessary for performance of an arm’s length transaction between ZF Friedrichshafen AG or its affiliates.

Conflict of Interest: any conflict of interest that impairs the Trustee’s objectivity and

independence in discharging its duties under the Commitments.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party and who has/have received from the Notifying Party the exclusive Trustee Mandate to sell the TRW Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] months from the Effective Date.

Hold Separate Manager: the person appointed by the Notifying Party for the TRW Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the TRW Divestment Business, as listed in **Table 4** of the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party, and who has the duty to monitor the Notifying Party's compliance with the conditions and obligations attached to the Decision.

Notifying Party: ZF Friedrichshafen AG, a company incorporated under the laws of Germany, with its registered office at Hauptverwaltung und Zentrale Forschung und Entwicklung, 88038 Friedrichshafen, Germany.

Personnel: the individuals listed in Section (f) and Section (g) of the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the TRW Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in Paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Sale and Purchase Agreement: the binding agreement concerning the sale of the TRW Divestment Business to the Purchaser.

Schedule: the schedule to these Commitments describing in more detail the TRW Divestment Business.

Trustees: the Monitoring Trustee and the Divestiture Trustee, as the case may be.

Trustee Divestiture Period: the period of [...] months from the end of the First Divestiture Period.

TRW: TRW Automotive Holdings Corp., a company incorporated under the laws of Delaware, with its registered office at 12001 Tech Center Drive, Livonia, Michigan 48150.

TRW Divestment Business: TRW's business in the design, manufacturing and sale of certain Chassis Components, which TRW refers to as linkage and suspension components, for light vehicles and heavy commercial vehicles, as more particularly described in Section B and the Schedule, which the Notifying Party commits to divest within the period provided for in Section B.

Section B. THE DIVESTMENT COMMITMENTS

Commitment to divest

2. In order to maintain effective competition, the Notifying Party commits to divest, or procure the divestiture of, the TRW Divestment Business by the end of the Trustee Divestiture Period as a going concern to the Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in Paragraph 18 of these Commitments.
3. To carry out the divestiture of the TRW Divestment Business, the Notifying Party commits to find a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the TRW Divestment Business within the First Divestiture Period. If the Notifying Party has not entered into such an agreement at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the TRW Divestment Business during the Trustee Divestiture Period in accordance with the procedure described in Paragraph 30 of these Commitments.
4. The Notifying Party shall be deemed to have complied with the commitment in Paragraph 2 of these Commitments if:
 - (a) *by the end of the Trustee Divestiture Period, the Notifying Party or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed Purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in Paragraph 18 of these Commitments; and*
 - (b) *the Closing of the sale of the TRW Divestment Business to the Purchaser takes place within the Closing Period.*
5. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in Paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the TRW Divestment Business, unless, following the submission of a reasoned request by the Notifying Party showing good cause, and accompanied by a report from the Monitoring Trustee, the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the TRW Divestment Business is no longer necessary to render the Concentration compatible with the internal market.

Structure and definition of the TRW Divestment Business

6. The TRW Divestment Business consists of TRW's European business active in the design, development, manufacturing and sale of certain Chassis Components, which TRW refers to as linkage and suspension components, for light vehicles and heavy commercial vehicles to original equipment manufacturers and original equipment suppliers, including all customers of such business regardless of location. The legal and functional structure of the TRW Divestment Business, as operated to date, is described in the Schedule. The TRW Divestment Business will include all assets and staff that are dedicated to the current operation or are necessary to ensure the viability and competitiveness of the TRW Divestment Business, in particular:
 - (a) *all tangible and intangible assets (including intellectual property rights);*
 - (b) *all licences, permits and authorisations issued by any governmental organisation for the benefit of the TRW Divestment Business;*
 - (c) *all contracts, leases, commitments and customer orders of the TRW Divestment Business; all customer, credit and other records of the TRW Divestment Business; and*
 - (d) *the Personnel.*

7. Where required by the Purchaser and as part of the Commitments, the Notifying Party is prepared to provide certain transitional services on a reasonable cost-plus basis to be agreed with the Purchaser and with the consent of the Monitoring Trustee to facilitate the transfer of the TRW Divestment Business. If they cannot be immediately provided either by the Purchaser or an external service provider, the Notifying Party is prepared to offer the following potential transition services for up to a period of [...] months and within the scope of such services as TRW currently provides to the TRW Divestment Business:
 - (a) *indirect purchasing services for (a) the Krefeld plant and (b) the Chassis Components research and development ("R&D") capability currently based in [Germany] (together with the Chassis Components purchasing and sales and marketing teams located in [Germany] , the "[German] Facility");*
 - (b) *human resources management services for the [German] Facility;*
 - (c) *maintenance services for the test and validation and prototype shop for the [German] Facility;*
 - (d) *IT-related and information systems related (e.g., SAP, 3D CAD, or PDM) support services for the (a) Dačice and Krefeld plants and (b) the [German] Facility;*
 - (e) *logistics services for the [German] Facility; and*

(f) *receivables/payable/payroll processing for (a) the Dačice and Krefeld plants and (b) the [German] Facility.*

8. The transitional services identified in Paragraphs 7(a) - 7(f) of these Commitments comprise the services currently provided centrally by TRW to the TRW Divestment Business¹ and which the TRW Divestment Business may require in order to commence its independent operation. With the exception of the services listed in the final sentence of this Paragraph, ZF is prepared to offer any other services currently provided centrally by TRW to the TRW Divestment Business on the terms identified in Paragraph 7 of these Commitments. Such transitional services will not include marketing, public relations, quote process support, legal or finance services, which cannot practically be provided by ZF to a competitor.

Section C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

9. From the Effective Date until Closing, the Notifying Party shall preserve, or procure the preservation of, the economic viability, marketability and competitiveness of the TRW Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the TRW Divestment Business. In particular, the Notifying Party undertakes:

- (a) *not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the TRW Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the TRW Divestment Business;*
- (b) *to make available, or procure to make available, sufficient resources for the development of the TRW Divestment Business, on the basis and continuation of the existing business plans;*
- (c) *to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on practice in the TRW Divestment Business), to encourage all Key Personnel to remain with the TRW Divestment Business, and not to solicit or move any Personnel to the Notifying Party's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the TRW Divestment Business, the Notifying Party shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by*

¹ Please see Paragraph 32 of the Schedule hereto.

those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission;

- (d) *to create a suitable, separated premises for the [German] Facility within the existing TRW [German] site, or to procure a suitable site within a 40 km radius of the current TRW [German] site, until the [German] Facility is relocated to a permanent site selected by the Purchaser; and*
- (e) *to use its reasonable best efforts, to the extent permitted by law, to facilitate the transfer to the Purchaser of the employees at the [German] Facility not identified as being Key Personnel in Table 4. The Notifying Party will encourage these employees to transfer and provide their relevant contact details as desired by the Purchaser, or otherwise make such employees available to the Purchaser, subject to compliance with all applicable laws.*

Hold-separate obligations

10. The Notifying Party commits, from the Effective Date until Closing, to keep the TRW Divestment Business separate from the businesses it is retaining and to ensure that unless explicitly permitted under these Commitments (including, but without limitation, Paragraph 9 of these Commitments): (i) management and staff of the businesses retained by the Notifying Party have no involvement in the TRW Divestment Business; (ii) the Key Personnel and Personnel of the TRW Divestment Business have no involvement in any business retained by the Notifying Party and do not report to any individual outside the TRW Divestment Business.
11. Until Closing, the Notifying Party shall assist the Monitoring Trustee in ensuring that the TRW Divestment Business is managed as a distinct and saleable entity separate from the businesses which the Notifying Party is retaining. Immediately after the adoption of the Decision, the Notifying Party shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the TRW Divestment Business independently and in the best interests of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Notifying Party. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in Paragraph 9(c) of these Commitments. The Commission may, after having heard the Notifying Party, require the Notifying Party to replace the Hold Separate Manager.

Ring-fencing

12. The Notifying Party shall implement, or procure the implementation of, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the TRW Divestment Business, and that any Confidential

Information relating to the TRW Divestment Business obtained by the Notifying Party before the Effective Date will, save as permitted by the last two sentences of this Paragraph 12, be eliminated and not be used by the Notifying Party. This includes measures vis-à-vis the Notifying Party's appointees on the supervisory board and/or board of directors of the TRW Divestment Business. In particular, the participation of the TRW Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the TRW Divestment Business. The Notifying Party may obtain or keep information relating to the TRW Divestment Business which is reasonably necessary: (x) for the divestiture of the TRW Divestment Business, or (y) the disclosure of which to the Notifying Party is required by law to enable the Notifying Party to comply with any legal or regulatory obligation.

Non-solicitation clause

13. The Notifying Party undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the TRW Divestment Business for a period of two years after Closing.

Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the TRW Divestment Business, the Notifying Party shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) *provide to potential purchasers sufficient information as regards the TRW Divestment Business; and*
 - (b) *provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.*

Reporting

15. The Notifying Party shall submit written reports in English on potential purchasers of the TRW Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Notifying Party shall submit a list of all potential purchasers having expressed interest in acquiring the TRW Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
16. The Notifying Party shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. THE PURCHASER

17. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

- (a) *the Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);*
- (b) *the Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the TRW Divestment Business as a viable and active competitive force in competition with the Notifying Party and other competitors; and*
- (c) *the acquisition of the TRW Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the TRW Divestment Business.*

18. The final binding Sale and Purchase Agreement (as well as ancillary agreements) relating to the divestment of the TRW Divestment Business shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the TRW Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the TRW Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the TRW Divestment Business without one or more Assets or members of the Personnel, or by substituting one or more Assets or members of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the TRW Divestment Business after the sale, taking account of the proposed purchaser.

Section E. TRUSTEE

I. Appointment procedure

19. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

20. If the Notifying Party has not entered into a binding Sale and Purchase Agreement regarding the TRW Divestment Business by one month before the end of the First Divestiture Period, or if the Commission has rejected a purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

21. The Trustee shall:

- (i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
- (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
- (iii) neither have nor become exposed to a Conflict of Interest.

22. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the TRW Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Notifying Party

23. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in Paragraph 21 of these Commitments and shall include:

- (a) *the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;*
- (b) *the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;*
- (c) *an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.*

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Notifying Party

25. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with Paragraphs 19 and 25 of these Commitments.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

27. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

28. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
 - (ii) oversee, in close cooperation with the Hold Separate Manager, the ongoing management of the TRW Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Party with the conditions and obligations attached to the Decision. To that end, the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the TRW Divestment Business, and the holding

separate of the TRW Divestment Business from the business retained by the Notifying Party, in accordance with Paragraphs 9 and 10 of these Commitments;

- (b) supervise the management of the TRW Divestment Business as a distinct and saleable entity, in accordance with Paragraph 11 of these Commitments;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that the Notifying Party does not after the Effective Date obtain any Confidential Information relating to the TRW Divestment Business,
 - in particular strive for the severing of the TRW Divestment Business’ participation in a central information technology network to the extent possible, without compromising the viability of the TRW Divestment Business,
 - make sure that any Confidential Information relating to the TRW Divestment Business obtained by the Notifying Party before the Effective Date is eliminated and will not be used by the Notifying Party, and
 - decide whether such information may be disclosed to, or kept by, the Notifying Party because the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture of the TRW Divestment Business, or because the disclosure is required to enable the Notifying Party to comply with any legal or regulatory obligation;
 - (d) monitor the splitting of assets and the allocation of Personnel between the TRW Divestment Business and the Notifying Party or its Affiliated Undertakings;
- (iii) propose to the Notifying Party such measures as the Monitoring Trustee considers necessary to ensure the Notifying Party’s compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the TRW Divestment Business, the holding separate of the TRW Divestment Business and the non-disclosure of competitively sensitive information;
 - (iv) review and assess potential purchasers of the TRW Divestment Business as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

- (a) potential purchasers receive sufficient and correct information relating to the TRW Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
- (b) potential purchasers are granted reasonable access to the Personnel;
- (v) act as a contact point for any requests by third parties in relation to the Commitments, in particular, potential purchasers of the TRW Divestment Business;
- (vi) provide to the Commission, sending the Notifying Party a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the TRW Divestment Business, as well as the splitting of assets and the allocation of Personnel, so that the Commission can assess whether the TRW Divestment Business is held in a manner consistent with the Commitments and, with respect to the TRW Divestment Business, the progress of the divestiture process as well as the availability of potential purchasers;
- (vii) promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these Commitments;
- (viii) within one week after receipt of the documented proposal referred to in Paragraph 18 of these Commitments, submit to the Commission, sending the Notifying Party a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the TRW Divestment Business after the Sale and as to whether the TRW Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the TRW Divestment Business without one or more Assets or not all of the Personnel affects the viability of the TRW Divestment Business after the sale, taking account of the proposed purchaser; and
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

29. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during, and for the purpose of, preparation for, the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

30. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell the TRW Divestment Business at no minimum price to a Purchaser, provided that the Commission

has approved both the Purchaser and the final binding Sale and Purchase Agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with Paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the Sale and Purchase Agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the Sale and Purchase Agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Party, subject to the Notifying Party's unconditional obligation to divest at no minimum price during the Trustee Divestiture Period.

31. During the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. Duties and obligations of the Notifying Party

32. The Notifying Party shall provide and shall cause its advisers to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Notifying Party's or the TRW Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments, and the Notifying Party shall provide the Trustee upon request with copies of any document. The Notifying Party shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
33. The Notifying Party shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the TRW Divestment Business. This shall include all administrative support functions relating to the TRW Divestment Business which are currently carried out at headquarters level. The Notifying Party shall provide and shall cause its advisers to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, and in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Notifying Party shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
34. The Notifying Party shall grant or procure that its Affiliated Undertakings grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the

sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the Closing, including the appointment of advisers to assist with the sale process. Upon request by the Divestiture Trustee, the Notifying Party shall cause the documents required for effecting the sale of the TRW Divestment Business and the Closing to be duly executed.

35. The Notifying Party shall indemnify the Trustee and its employees and agents (each an “Indemnified Party”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for, any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisers.
36. At the expense of the Notifying Party, the Trustee may appoint advisers (in particular for corporate finance or legal advice), subject to the Notifying Party’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisers necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Party refuse to approve the advisers proposed by the Trustee, the Commission may approve the appointment of such advisers instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisers. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisers who served the Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
37. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party and the TRW Divestment Business with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
38. The Notifying Party agrees to the contact details of the Monitoring Trustee being published on the website of the Commission’s Directorate-General for Competition and the Notifying Party shall inform interested third parties, in particular any potential purchasers of the TRW Divestment Business, of the identity and the tasks of the Monitoring Trustee.
39. For a period of ten years from the Effective Date the Commission may request all information from the Notifying Party that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

40. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
- (a) *the Commission may, after hearing the Trustee and the Notifying Party, require the Notifying Party to replace the Trustee; or*
 - (b) *the Notifying Party may, with the prior approval of the Commission, replace the Trustee.*
41. If the Trustee is removed pursuant to Paragraph 40 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full handover of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in Paragraphs 19-26 of these Commitments.
42. Unless removed pursuant to Paragraph 40 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. THE REVIEW CLAUSE

43. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.
44. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. ENTRY INTO FORCE

45. The Commitments shall take effect upon the date of adoption of the Decision.

[Signed]

duly authorised for and on behalf of
ZF Friedrichshafen AG

SCHEDULE

1. The TRW Divestment Business includes two manufacturing plants located respectively in the Czech Republic (Dačice) and Germany (Krefeld). The Purchaser will also acquire TRW's Chassis Components research and development ("R&D") capability. The R&D capability is currently based in [Germany] and also includes Chassis Components purchasing, sales and marketing teams, (together, the "[German] Facility").² The TRW Divestment Business will also include two sales engineers based in [...], France, and one sales engineer based in [...], Italy³.
2. The TRW Divestment Business will include assets, contracts and other elements necessary to allow the Purchaser to run it as a self-sufficient business. Each of the plants and the TRW Divestment Business itself has its own management, including a plant manager and a management team (in charge of finance, human resources, quality, logistics and production) that handle the internal activity of the plants. The TRW Divestment Business is also able to manufacture all of its own Chassis Component products, as explained below.
3. None of the production assets or intangible assets that form part of the TRW Divestment Business are shared with other TRW entities.
4. Therefore, the TRW Divestment Business has the capability to operate independently from the Notifying Party.
5. In accordance with Paragraph 6 of these Commitments, the TRW Divestment Business also includes:

(a) the following main tangible assets:

I. Dačice

6. The TRW Divestment Business in Dačice at the following address:

Strojírenská 160
380 01 Dačice
Czech Republic

² The [German] Facility is currently co-located with TRW Steering in [Germany], but separately managed under a Chassis Components management team. The [German] Facility will be separated from the current [German] location. All of the [German] Facility, including personnel and purchase, and sales and marketing teams, will transfer with the TRW Divestment Business.

³ These sales engineers are currently co-located with other TRW activities in France and Italy, but will be separated and relocated to different sites (in the course of being identified).

7. The TRW Divestment Business in Dačice is composed of two facilities:⁴
- (i) the Chassis Components plant; and
 - (ii) the technical support centre.
8. The Dačice Chassis Components site has a total size of [...] m², of which [...] m² are covered, including [...] m² dedicated to production. The Dačice Chassis Components site underwent the following recent refurbishments: [...].⁵
9. Currently, the Dačice Chassis Components plant has a total production capacity of approximately [...] pieces.
10. The Dačice Chassis Components plant's 2013 capacity and production volume for these products is as shown below:

	Assembly Lines	2013 Production (Volume)	2013 Capacity (Volume) ⁶	2013 Spare Capacity (Volume)
Light Vehicles				
Control Arms	[...]	[...]	[...]	[...]
Suspension Ball Joints	[...]	[...]	[...]	[...]
Tie Rods	[...]	[...]	[...]	[...]
Pillow Ball Joints ⁷	[...]	[...]	[...]	[...]
Stabilizer Links	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]
Heavy Commercial Vehicles				
V-Links	[...]	[...]	[...]	[...]
Torque Rods	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]

⁴ The Dačice site also hosts a facility that is part of TRW's engine components business. TRW is in the process of selling this business to Federal-Mogul Corporation (as a result of which the part of the Dačice site dedicated to engine components will be leased to Federal-Mogul Corporation). The Commission cleared the transaction on 15 December 2014 (Case COMP/M.7400 – *Federal-Mogul Corporation / TRW Engine Components*). Closing of this transaction occurred on [...] February 2015.

⁵ [...].

⁶ Considering [...] shifts a day and [...] days per week.

⁷ Pillow ball joints are a type of suspension ball joints.

II. Krefeld

11. The TRW Divestment Business in Krefeld at the following address:

Heidbergsweg 100
47809 Krefeld
Germany

12. The TRW Divestment Business in Krefeld is composed of one plant which produces only Chassis Components for both light vehicles and heavy commercial vehicles.

13. The Krefeld plant has a total size of [...] m², of which [...] m² are covered.

14. All raw materials, stocks, work in progress and semi-finished and finished goods related to the TRW Divestments Business will be transferred to the Purchaser.

15. The premises and the machinery of the TRW Divestment Business will also be transferred as part of the Commitments. These include production assets, such as robots, hydraulic presses, assembly presses, computer numerical control machines, automated material feeding machines, and testing and validation assets, such as various stiffness, rotational, articulation, wear, fatigue, sealing, corrosion test rigs and chambers.

16. Currently, the Krefeld Chassis Components plant has a total production capacity of approximately [...] pieces.

17. The Krefeld Chassis Components plant's 2013 capacity and production volume for these products is as shown below:

	Assembly Lines	2013 Production (Volume)	2013 Capacity (Volume) ⁸	2013 Spare Capacity (Volume)
Light Vehicles				
Control Arms	[...]	[...]	[...]	[...]
Suspension Ball Joints	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]
Heavy Commercial Vehicles				
Drag Rods, Tie Rods, Stabilizer Rods	[...]	[...]	[...]	[...]
Ball Joint Ends	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]

⁸ Considering [...] shifts a day and [...] days per week.

(b) the following main intangible assets:

18. There are no intangible assets part of the TRW Divestment Business besides the active worldwide patents listed in Annex 5.1.
19. TRW is not aware of any IP rights that are currently shared by the TRW Divestment Business and TRW's non-Chassis Components businesses being retained by ZF. However, ZF will provide the Purchaser with a worldwide, irrevocable, perpetual, royalty-free licence for any such rights if identified.

(c) the following main licences, permits and authorisations:

20. The Purchaser will also acquire all licences, permits and authorisations necessary to operate the plants, develop, market and sell the products and, in general, to carry on the TRW Divestment Business.

(d) the following main contracts, agreements, leases, commitments and understandings

21. The Purchaser will acquire all the testing and production assets and testing contracts which are currently owned by the TRW Divestment Business, unless expressly excluded. In particular:

Production and Engineering Support

22. The Purchaser will acquire legal title or equivalent to the land and buildings of both the Dačice and Krefeld manufacturing sites. The Purchaser will also acquire legal title or equivalent to the land and buildings of the Dačice technical support centre. The Purchaser will acquire the know-how for the operation of the lines, including the know-how regarding ball joints, and the active worldwide patents listed in Annex 5.1. Because the Purchaser will be assigned the entire right, title and interest to the patents listed in Annex 5.1, the duration of the rights will be for the entire life of each of the individual patents, as indicated in column G of the annex.⁹
23. The Purchaser will also acquire the [German] Facility.¹⁰ The R&D team is responsible for the development of new designs, including the related single components such as plastic bearings, sealing systems, grease, surface coatings, dimensions and the related tolerances. The R&D team is also responsible for the development of the production

⁹ The Purchaser will assume licence agreements currently in place and grant a licence back as needed to support TRW's non competing steering business in [...] which manufactures tie rods for steering gears. TRW's production of tie rods in [...] is exclusively for captive use by TRW's steering business and is not used to supply any third party customers. The [...] facility has a nominal capacity of [...] million units per year, and is currently producing [...] million units per year for the TRW steering business. TRW's [...] facility does not produce any other Chassis Components.

¹⁰ The [German] Facility is currently co-located with TRW Steering in [Germany], but separately managed under a Chassis Components management team. The [German] Facility will be separated from the current [German] location. All the [German] Facility, including personnel, will transfer with the TRW Divestment Business.

process steps and production parameters.¹¹ The [German] Facility that will be part of the TRW Divestment Business will be able to provide all necessary engineering services for the Krefeld plant.

24. The [German] Facility includes testing and validation, advance manufacturing engineering, engineering, and prototype, and also purchasing and sales and marketing teams, all located in [Germany]. These chassis teams are composed of [...] employees entirely dedicated to Chassis Components.
25. The Purchaser will also acquire all licences, permits and authorisations necessary to operate the plants, develop, market and sell the products and, in general, to carry on the TRW Divestment Business.
26. In addition, the Purchaser will acquire the personnel of the TRW Divestment Business, including employees who are indispensable for the operation and viability of the TRW Divestment Business.

Advertising and Communication

27. If required by the Purchaser, TRW will transfer to the Purchaser appropriate advertising and communication materials relating to the TRW Divestment Business (removing any TRW logos or brands).

Customer Relations

28. Relationships with customers are conducted *via* supply agreements.
29. The Purchaser will acquire the customer list for the TRW Divestment Business, sales, marketing and promotional information as well as the contracts and purchase orders. In particular, the Notifying Party will provide relevant details of the customer base for the products manufactured and commercialised by the TRW Divestment Business during the [...] month period preceding the Effective Date. The Notifying Party will also provide relevant details of the customer base for all contracts for components to be produced by the TRW Divestment Business but that have not yet begun production.

Supplier Relations

30. The Purchaser will acquire the supplier list for the TRW Divestment Business as well as supplier contracts. In particular, the Notifying Party will provide relevant details of the supplier base for the TRW Divestment Business during the [...] month period preceding the Effective Date. As indicated above, the Notifying Party is prepared to offer transitional indirect purchasing services to the Krefeld plant and the [German] Facility.

¹¹ The development of new designs and the production process steps and parameters is called the “bookshelf.”

(e) *the following customer, credit and other records:*

31. Please see Paragraphs 21 - 30 of these Commitments.

(f) *the following Personnel:*

32. Each plant has its own management resources, which include a plant manager and a management team (in charge of finance, quality, logistics and production) handling the internal activity of the plant. Day-to-day customer relations and logistics are managed locally at the plant. Certain services, however, are currently provided centrally by TRW. In particular, TRW centrally provides:

- (i) both direct and indirect material purchasing;¹²
- (ii) marketing, public relations, and quote process support;
- (iii) common support services such as legal, finance, IT, human resources, and health safety and environment support, intercompany sales function, patent/intellectual property management, quality and quality management (*i.e.*, audit, certification and process control), and facility/pool car management; and
- (iv) failure mode and effect analysis (“FMEA”) services and engineering change management system.¹³

33. In addition, as described in Paragraph 7(a) the [German] Facility is currently located in [Germany]. The TRW Divestment Business will include the [German] Facility. The Parties are in the process of determining how the [German] Facility would be transferred as part of the TRW Divestment Business. The TRW Divestment Business will also include two sales engineers based in [...], France, and one sales engineer based in [...], Italy.¹⁴

34. The Notifying Party is ready to use all reasonable endeavours to make available to the Purchaser any Personnel identified in Paragraphs 35 - 41 of this Schedule.

12 “Direct material purchasing” refers to material used in the physical part of the Chassis Components which is part of the bill of materials. “Indirect material purchasing” refers to all other material used to support making the physical part (such as sundries).

[...].

13 FMEA is a systematic technique for failure analysis. Engineering change management is a standard change management system (*i.e.*, checking data required for a drawing change (engineering, operation, purchasing, and sales items) to make sure that all information is available before a requested change is implemented.

14 These sales engineers are currently co-located with other TRW activities in France and Italy, but will be separated and relocated to different sites (in the course of being identified).

[German] Facility

35. In particular, the Notifying Party is ready to use all reasonable endeavours to transfer to the Purchaser the key employees of the [German] Facility listed in Table 4.
36. The following table shows the number of Personnel at the [German] Facility (excluding students):

Table 1 – Personnel at the [German] Facility¹⁵

Personnel Category	Employees ¹⁶
Management	[...]
Purchasing	[...]
Sales	[...]
Programme Management	[...]
Engineering ¹⁷	[...]
Global R&D	[...]
<i>Total</i>	[...]

Dačice

37. In particular, the Notifying Party is ready to use all reasonable endeavours to transfer to the Purchaser the top management of the TRW Divestment Business in Dačice listed in Table 4.
38. The following table shows the number of Personnel at the Dačice plant (excluding students). The Notifying Party is ready to use all reasonable endeavours to transfer these categories of Personnel to the Purchaser:

15 As of 31 December 2014.

16 Including Key Personnel.

17 Of the [...] engineering personnel in the [German] Facility, [...] are assigned to R&D on HCV Chassis Components and [...] to R&D on LV Chassis Components.

Table 2 – Personnel at the Dačice plant¹⁸

Personnel Category	Employees ¹⁹
Management	[...]
Finance	[...]
HR	[...]
IT	[...]
Logistic	[...]
Maintenance	[...]
NPI (Programme Management)	[...]
Process Engineering	[...]
Production	[...]
Purchasing	[...]
Quality	[...]
Warehouse	[...]
Others (LPO, Union)	[...]
Technical Support Center Dačice Engineering ²⁰	[...]
Technical Support Center Dačice Global R&D	[...]
<i>Total</i>	[...]

Krefeld

39. In particular, the Notifying Party is ready to use all reasonable endeavours to transfer to the Purchaser the top management of the TRW Divestment Business in Krefeld listed in Table 4.
40. The following table shows the number of Personnel at the Krefeld plant (excluding students). The Notifying Party is ready to use all reasonable endeavours to transfer these categories of Personnel to the Purchaser:

18 As of 31 December 2014.

19 Including Key Personnel.

20 Excluding the steering engineers which are not part of the TRW Divestment Business.

Table 3 – Personnel at the Krefeld plant²¹

Personnel Category	Employees ²²
Management	[...]
Finance Controlling	[...]
HR	[...]
Logistic	[...]
Shipping/Receiving	[...]
Maintenance	[...]
Process Engineering	[...]
Production	[...]
NPI	[...]
Quality	[...]
Tool Store	[...]
Works Council	[...]
<i>Total</i>	[...]

41. For the avoidance of doubt, those engineers employed at the Dačice technical support centre and the [German] Facility which are shared or work exclusively for TRW Steering will not form part of the TRW Divestment Business. There are no other shared or seconded personnel.²³

(g) *the following Key Personnel:*

42. The Notifying Party considers that the following Key Personnel are necessary to maintain the viability and competitiveness of the TRW Divestment Business, and should therefore be the subject of Paragraph 9(c) of these Commitments:

²¹ As of 31 December 2014.

²² Including Key Personnel.

²³ Besides [...] (*see* footnote 24) and the personnel providing the services described in Paragraph 32 of this Schedule.

Table 4 – Key Personnel

Position	Name
I. TRW North America	
[...]	[...]
[...]	[...]
II. [German] Facility - Key Commercial Executives	
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
III. [German] Facility - Key Engineering Personnel	
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
IV. Dačice	
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
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[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
V. Krefeld	
[...]	[...] ²⁴
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

(h) the arrangements for the supply with the following products or services by the Notifying Party or Affiliated Undertakings for a transitional period of up to [...] months after Closing:

43. Please see Paragraph 7 of these Commitments.

44. The TRW Divestment Business (for the purpose of the Commitments) will not include:

24 [...] TRW is currently searching for a permanent plant manager who will be part of the TRW Divestment Business. [...].

- (i) Any manufacturing facilities other than the plants indicated above (in particular, the TRW Divestment Business in Dačice will not include the engine components business sold to Federal-Mogul Corporation);
- (ii) The ownership of any IP rights that are not used exclusively in connection with the TRW Divestment Business as presently being conducted and operated by TRW;²⁵
- (iii) Any brands or logos currently held, as owner or licensee, by TRW or any rights to sell the products manufactured in the TRW Divestment Business with the TRW name;
- (iv) Any rights to www.trw.com, www.trwczech.cz, or www.trw.de or any other websites or domain names owned by TRW or the Notifying Party;
- (v) Books and records required to be retained by TRW or the Notifying Party pursuant to any statute, rule, regulation or ordinance, provided that the Purchaser(s) shall, to the extent needed, receive a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;
- (vi) General books of account and books of original entry that comprise TRW or its affiliated undertakings permanent accounting or tax records;
- (vii) Any customers (and associated customer information) not specifically listed in Annex 5.8; and
- (viii) Certain employees currently employed by TRW who are not essential for the viability of the TRW Divestment Business (such as, *e.g.*, the steering engineers employed at the Dačice technical support centre or the steering engineers working for TRW's [German] Facility).

45. If there is any asset or personnel which is not be covered by Paragraph 2 of this Schedule but which is both used (exclusively or not) in the TRW Divestment Business and necessary for the continued viability and competitiveness of the TRW Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

²⁵ As noted in Paragraph 18 of this Schedule, the Purchaser will acquire the know-how for the operation of the TRW Divestment Business production lines and the active worldwide patents listed in **Annex 5.1**.

Annex 5.1

TRW Automotive Corp.'s Worldwide Patents

[...]

Annex 5.8

TRW Automotive Corp.'s Shared Customers

[...]