

EN

***Case No COMP/M.7564 - MAHLE BEHR/ DELPHI
THERMAL SYSTEMS BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/06/2015

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Brussels, 23.6.2015
C(2015) 4419 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case M.7564 – Mahle Behr/ Delphi Thermal Systems Business
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

(1) On 18 May 2015, the European Commission ('Commission') received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Mahle Behr GmbH & Co. KG ('Mahle Behr', Germany) controlled by Mahle GmbH ('Mahle', Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the thermal systems business ('Delphi Thermal') of the undertaking Delphi Automotive PLC ('Delphi', United Kingdom) by way of a combined purchase of shares and of assets.³ Mahle and Delphi Thermal are designated hereinafter as the 'parties to the proposed transaction' or the 'parties'.

1. THE PARTIES

(2) Mahle is a global supplier of components to the automotive and engine industries. Via its wholly-owned subsidiary Mahle Behr, it is active in the development and production of components and complete systems for automotive engine cooling and air conditioning management. Finally, its jointly controlled subsidiary HBPO GmbH ('HBPO') engages in the assembly of front-ends for passenger cars, which include

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 OJ C 170, 23.5.2015, p. 9.

certain components of automotive thermal systems that are the subject of the proposed transaction.

- (3) Delphi Thermal is a global supplier of automotive and commercial thermal products, including air conditioning modules (both for vehicles and buildings), compressors and engine cooling modules.

2. THE OPERATION AND THE CONCENTRATION

- (4) On 17 February 2015, Mahle and Delphi entered into an agreement whereby the former will acquire, via its wholly-owned subsidiary Mahle Behr, all the assets as well as the entire share capital of the various legal entities that together make up Delphi Thermal. Mahle will accordingly acquire sole control over Delphi Thermal and the proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

- (5) It is to be noted that Delphi currently owns 50% of each of Shanghai Delphi Automotive Air Conditioning Systems Co., Ltd. ('SDAAC', China) and Korea Delphi Automotive Systems Corporation (South Korea), two Asian joint venture companies active in the field of automotive thermal management systems. Although Mahle signed a non-binding letter of intent according to which it intends to acquire SDAAC [...], this possible transaction does not concern the South Korean joint venture, and moreover is not interdependent with the proposed transaction, neither de jure nor de facto. These two joint venture companies will, post-transaction, remain with Delphi and do not, accordingly, form part of the proposed transaction.

3. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (Mahle: EUR 6 941 million; Delphi Thermal: EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (Mahle: EUR [...]; Delphi Thermal: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The proposed transaction therefore has an EU dimension according to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

- (7) The parties' activities overlap in relation to the supply of automotive thermal management modules and their constituent components to original equipment car manufacturers ('OEMs') and original equipment suppliers ('OESs') at a global level. The parties are also active, to a very limited extent, in the supply of automotive compressors to the independent aftermarket ('IAM') in various EU Member States. Finally, a vertical relationship exists between, on the one hand, the activities of the parties in the OEM/OES supply of LV charge air coolers and HBPO's activities in the OEM/OES supply of LV pre-assembled front-end modules, which incorporate the former input product.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

4.1. Product market definition

Supply channel (OEM/OES versus IAM) and vehicle type (LVs versus HCVs)

- (8) In previous decisions, the Commission identified separate relevant product markets for individual automotive components⁵ as well as wider markets for automotive component systems which are comprised of several individual components.⁶ Furthermore, the Commission identified separate relevant product markets according to whether products are sold to the OEM/OES or IAM channel⁷ and to whether they are intended for vehicles that weigh less than six tonnes (so-called light vehicles, 'LVs') or for heavy commercial vehicles ('HCVs').⁸
- (9) The parties consider that the distinction between LVs and HCVs does not apply to the OEM/OES supply of automotive thermal systems and components, given the similar characteristics of the products intended for these two segments and the high degree of supply side flexibility. The parties furthermore indicate that the IAM for heating, ventilation, air conditioning (HVAC) modules and engine cooling products is very limited in size, amounting to 1%-2% of their overall sales.
- (10) The large majority of OEM customers that were consulted during the Commission's market investigation however indicated that they generally organise separate tenders for their acquisition of each of LV and of HCV OEM/OES automotive thermal management modules and components.⁹ In relation to the existence of a separate IAM for the sale of automotive thermal management systems and components, the results of the Commission's market investigation were more mixed: only a small minority of competitors and about half of the customers consulted considered that this is the case.¹⁰
- (11) The definition of the relevant product market can however be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

⁵ See, e.g., COMP/M.6714 – *U-Shin / Valeo CAM* (2013), COMP/M.6083 – *Fiat / GM / VM Motori JV* (2011), COMP/M.6045 – *JCI / CRH* (2011), COMP/M.5930 – *JCI / Michel Thierry Group* (2011), COMP/M.4456 – *Mahle / Dana EPG* (2007), COMP/M.4524 – *Nemak / Hydro Castings* (2007), COMP/M.4500 – *Nemak / TK Aluminium "A"* (2007), COMP/M.3151 – *Thyssenkrupp / Sofedit* (2003), COMP/M.1778 – *Freudenberg / Phoenix / JV* (2000), COMP/M.1907 – *WOCO / Michelin* (2000), COMP/M.1338 – *Teksid / Renault* (1999) or COMP/M.1189 – *Teksid / Norsk Hydroproduksjon / Meridian* (1998).

⁶ See, e.g., COMP/M.6714 – *U-Shin / Valeo CAM* (2013), COMP/M.6339 – *Freudenberg & Co / Trelleborg / JV* (2012), COMP/M.5799 – *Faurecia / Plastal* (2010) or M.536 – *Torrington / Ingersoll* (1995).

⁷ See, e.g., COMP/M.6714 – *U-Shin / Valeo CAM* (2013), COMP/M.5799 – *Faurecia / Plastal* (2010) or COMP/M.4456 – *Mahle / Dana EPG* (2007).

⁸ See, e.g., COMP/M.5799 – *Faurecia / Plastal* (2010); COMP/M.4456 – *Mahle / Dana EPG* (2007).

⁹ Responses to the Commission's questionnaire to customers, question 4.

¹⁰ Responses to the Commission's questionnaire to customers, question 9; Responses to the Commission's questionnaire to competitors, question 7.

HVAC modules

- (12) Regarding HVAC modules, the Commission considered in one previous case that the market for pre-assembled HVAC modules – rather than their individual components – constituted the relevant product market.¹¹ In two other instances the Commission considered that the various components of HVAC engines could also constitute separate relevant product markets, ultimately leaving the precise market definition open.¹²
- (13) The parties explain that HVAC modules are manufactured and sold as whole modules and submit that the relevant product market therefore comprises the supply of pre-assembled HVAC modules.
- (14) The results of the market investigation carried out by the Commission provide support for the parties' claim that an overall market for the OEM/OES supply of HVAC modules exists. In relation to LVs, the majority of customers approached by the Commission indicated that they source whole HVAC modules rather than their individual constituent components, and the minority of customers that do purchase individual components of HVAC modules also purchase such pre-assembled HVAC modules. Regarding HCVs, none of the customers mentioned acquire the components of HVAC modules separately, while the majority confirmed that they acquire pre-assembled HVAC modules.¹³ Similarly, the majority of the parties' competitors that were consulted during the Commission's market investigation indicated that they exclusively supply pre-assembled HVAC modules.
- (15) The existence of a separate relevant product market for HVAC modules is supported by the win/loss data submitted by the parties, which shows that OEMs organise separate tenders for this product. This understanding also seems to be confirmed by the parties' internal analysis of the HVAC market (held in internal documents).
- (16) The definition of the relevant product market involving the supply of HVAC modules and components can however be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

Engine cooling modules and their constituent components

- (17) Regarding engine cooling modules and their constituent components, the Commission has in the past identified separate markets for condensers and radiators, two of the constituent components of these modules.¹⁴ In two other cases, the Commission considered that individual components of engine cooling modules could indeed constitute separate markets, ultimately leaving the precise market definition open.¹⁵

¹¹ See COMP/M.2366 – *Denso / MMC* (2001).

¹² See COMP/M.6183 – *Mahle / Behr* (2011) and COMP/M.5862 – *Mahle / Behr / Behr Industry* (2010).

¹³ Responses to the Commission's questionnaire to customers, questions 5 and 6.

¹⁴ See COMP/M.2366 – *Denso / MMC* (2001).

¹⁵ See COMP/M.6183 – *Mahle / Behr* (2011) and COMP/M.5862 – *Mahle / Behr / Behr Industry* (2010).

- (18) The parties argue that an overall system market for the supply of engine cooling modules exists, given that (i) OEM customers would in most cases organise tenders for complete engine cooling modules rather than for any individual components thereof, and (ii) most manufacturers of engine cooling products would offer all products that form part of an engine cooling module.
- (19) The results of the market investigation carried out by the Commission provide support for the existence of both a separate relevant product market for whole engine cooling modules as well as separate relevant product markets for some of their individual constituent components. The vast majority of customers consulted during the market investigation namely indicated to regularly purchase not only engine cooling modules but also at least some constituent components on a standalone basis (namely radiators, condensers and charge air coolers, the three products in relation to which the proposed transaction gives rise to affected markets¹⁶).¹⁷ Also, all competitors that responded to the Commission's market investigation mentioned that they supply pre-assembled engine cooling modules, while the majority of them furthermore indicated to supply the three aforementioned components of these modules in addition thereto.¹⁸
- (20) The existence of separate relevant product markets for engine cooling modules, charge air coolers, radiators and condensers is supported by the win/loss data submitted by the parties, which shows that OEMs organise separate tenders for each of these products. This understanding also seems to be confirmed by the parties' internal analyses of the various markets (held in internal documents).
- (21) The definition of the relevant product market involving the supply of engine cooling modules and their constituent components can however be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

Pre-assembled front-end modules

- (22) The Commission has previously assessed whether a separate relevant product market exists for the OEM/OES supply of front-end modules such as those manufactured by HBPO.¹⁹ Although it rather found indications for separate relevant markets for the components of front-end modules to exist, it ultimately left this question open.
- (23) The parties consider in this regard that no separate relevant product market exists for the supply of LV front-end modules and that, accordingly, this vertical relationship does not constitute an affected market.
- (24) The question of whether a separate relevant product market for the OEM/OES supply of front-end modules exists can however be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

¹⁶ For the definition of affected markets, see Annex 1 point 6.3 of Commission Implementing Regulation (EC) No 802/2004, as last amended by Commission Implementing Regulation (EU) No 1269/2013 (OJ L 336, 14.12.2013, p. 1-36).

¹⁷ Responses to the Commission's questionnaire to customers, question 5.

¹⁸ Responses to the Commission's questionnaire to competitors, question 6.

¹⁹ COMP/M.5799 – *Faurecia/Plastal* (2010); COMP/M.6537 – *Faurecia/Plastal* (2012).

4.2. Geographic market definition

- (25) In previous decisions, the Commission considered the relevant market for the supply of automotive components to the OEM/OES channel to be at least EEA-wide and possibly worldwide in scope, whereas in relation to the IAM it consistently assessed national markets.²⁰ The parties do not contest these geographic delineations of the relevant product markets affected by the proposed transaction.
- (26) Notwithstanding that a large part of customers consulted during the Commission's market investigation organises their purchasing of automotive thermal management systems and components at worldwide level, a significant number of customers actually require suppliers of LV thermal management modules and components to have manufacturing facilities in the EEA.²¹ This is likely due to the importance of transportation costs, which the majority of respondents to the Commission's market investigation indicate as accounting for between 5% and 10% of the total price.²²
- (27) Given the importance attributed by some customers to their suppliers having manufacturing plants in the EEA, the Commission considered and focused on an EEA-wide market when assessing the proposed transaction.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal non-coordinated effects

OEM/OES

- (28) In the OEM/OES segment, the proposed transaction gives rise to affected markets in the EEA in relation to both HVAC modules and engine cooling modules as well as condensers, radiators and charge air coolers (which are all constituent components of engine cooling modules). Except for HVAC modules, the affected markets exclusively involve the supply of thermal management systems and components for LVs.
- (29) The parties' relative individual and combined positions on the various markets that are affected by the proposed transaction are referenced in table 1, below.²³ In order to obtain an accurate view of the parties' strength, given that these are bidding markets, it is important to assess market shares over a significant period of time, covering both past and future. The case team has therefore also requested the parties to set out how they expect their market shares to develop over the next three to five years, taking into account on-going contracts as well as awarded contracts for future production.²⁴

²⁰ See, e.g., COMP/M.6183 – *Mahle / Behr* (2011), COMP/M.5862 – *Mahle / Behr / Behr Industry* (2010), COMP/M.4878 – *Continental / Siemens VDO* (2007) or COMP/M.2366 – *Denso / MMC* (2001).

²¹ Responses to the Commission's questionnaire to customers, question 14.

²² Responses to the Commission's questionnaire to customers, question 13; Responses to the Commission's questionnaire to competitors, question 9.

²³ Although the parties submit not to supply individual components of HVAC modules, they confirm, for completeness sake, that their shares of any hypothetical market for the manufacture and supply of heater cores, evaporators or internal heat exchangers (i.e. the constituent components of HVAC modules) would not differ from those provided in relation to HVAC modules.

²⁴ This approach is in line with the Commission's methodology adopted in case COMP/M.3486 – *Magna / New Venture Gear* (2004).

TABLE 1 – EEA shares of OEM/OES supply (2012/2013 and 2014)

EEA (volume)	LV HVAC modules		HCV HVAC modules		LV Engine cooling modules		LV Charge air coolers		LV Condensers		LV Radiators	
	2012	2014	2013	2014	2012	2014	2012	2014	2012	2014	2012	2014
Mahle	[20-30]%	[20-30]%	[40-50]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[30-40]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%
Delphi Thermal	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Parties combined	[30-40]%	[20-30]%	[50-60]%	[50-60]%	[20-30]%	[20-30]%	[40-50]%	[40-50]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%
Valeo	[20-30]%	[20-30]%	[5-10]%	[10-20]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%
Denso	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Halla Visteon	[10-20]%	[10-20]%	-	-	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%

Source: Form CO, parties' internal estimates

- (30) Based on the market share forecasts for the next three to five years provided by the parties, it can be concluded that the structure of the various affected markets is unlikely to change significantly going forward. Both Mahle and Delphi Thermal expect their market shares to remain stable across the various affected markets; in the market for LV condensers, the only affected market where Mahle and Delphi Thermal both forecast an increase in market share of respectively [0-5]% and [5-10]%, their relative position (players number 2 and 4) will furthermore not change.
- (31) As can be seen in Table 1, the parties will continue to face significant competitors in all plausible markets that are affected by the proposed transaction. Also, Delphi Thermal appears to be the least strong player in all affected markets except for the market involving the OEM/OES supply of LV charge air coolers in the EEA – in this market four competitors will nonetheless remain active post completion of the proposed transaction. Based on information provided by the parties, the Commission notes that Delphi Thermal also seems to possess a significantly lower number of patents in relation to HVAC modules, radiators, condensers and charge air coolers than Valeo, Denso and Mahle, which supports the parties' claim that Delphi Thermal does not constitute an important player in the various EEA automotive thermal markets.
- (32) The Commission furthermore considers that HVAC and engine cooling modules and components constitute homogeneous and relatively low-cost products, which supports a finding that Delphi Thermal is not a particularly close competitor to Mahle. During the Commission's market investigation it was confirmed in this regard by virtually all OEM customers that at least four suppliers – and in most cases five or even six – are currently technically and commercially capable of supplying them with all

automotive thermal management products mentioned in Table 1, above.²⁵ Whereas Mahle is always included in this list of potential suppliers, some OEM customers moreover indicated that Delphi Thermal is in fact not technically and commercially capable of supplying them with certain of these automotive thermal management products. These results are in line with the fact that the parties' main competitors generally seem to lose LV OEM/OES automotive thermal business more to Mahle than to Delphi Thermal.²⁶ Based on the foregoing, the Commission considers that Mahle and Delphi Thermal are not particularly close competitors and that several capable alternative suppliers of automotive thermal management products will remain post-completion of the proposed transaction.

- (33) What is more, the parties claim that the suppliers in the various affected markets are not capacity constrained, which is the case for their own EEA production facilities in relation to at least a number of automotive thermal products.²⁷ The Commission's market investigation furthermore provided some evidence for the existence of excess capacity as well as an ability to increase capacity in the short-term (i.e. one to two years) on the part of the parties' main competitors.²⁸ This strengthens the likelihood that OEM customers will be able to maintain effective competition in their tender procedures post-merger.
- (34) In addition, it appears that OEMs are able to maintain competition during the lifetime of a vehicle platform either by engaging in dual-sourcing or by including competition clauses in their supply agreements. Accordingly, OEMs can respectively switch to a different supplier during vehicle production or demand ad-hoc price reductions in addition to those foreseen in the initial supply contract. In this regard, it is important to note that the parties have provided three examples of Mahle's and Delphi Thermal's customers ([...]) actually switching to another supplier during on-going vehicle production as well as two examples of Delphi Thermal's customers ([...]) securing a price reduction that was not foreseen in the initial supply contract. The majority of the parties' competitors that responded to the Commission's market investigation confirm in this respect that OEM customers can indeed under the relevant supply agreements insist on ad-hoc (i.e. not contractually pre-agreed) price revisions throughout the lifetime of a vehicle platform in case of changed competitive circumstances (e.g. changes in the price of raw inputs as well as technological developments).²⁹ These are elements that support the parties' claim that OEMs possess a degree of bargaining power which renders it further unlikely that the proposed transaction gives rise to any competition concerns.
- (35) Finally, none of the respondents to the Commission's market investigation raised any competitive concerns in relation to the proposed transaction. Rather, the majority of both the parties' customers as well as their competitors that were consulted expected the intensity of competition in the various markets for the OEM/OES supply of automotive thermal management products to either remain the same or increase as a result of the proposed transaction. At the same time, this same majority of competitors and customers

²⁵ Responses to the Commission's questionnaire to customers, question 16.

²⁶ Responses to the Commission's questionnaire to competitors, questions 17 and 18.

²⁷ Form CO, Annex 7.5.

²⁸ Responses to the Commission's questionnaire to competitors, questions 12 and 13.

²⁹ Responses to the Commission's questionnaire to competitors, question 19.

expected the price level in these markets to either remain the same or decrease as a result thereof.³⁰

- (36) In light of all of the foregoing, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal non-coordinated effects arising in the various markets for the OEM/OES supply of automotive thermal management products in the EEA.

IAM

- (37) In the IAM, the proposed transaction gives rise to affected markets in relation to the supply of LV automotive compressors in Denmark and Germany.³¹
- (38) However, the parties' individual and combined positions on the market for the sale of LV automotive compressors to the IAM in both Denmark and Germany are limited and the proposed transaction furthermore involves only a limited increment in Mahle's position. In Denmark, Mahle and Delphi Thermal respectively account for [20-30]% and [0-5]% of total IAM sales of LV automotive compressors. In Germany, in turn, Mahle and Delphi Thermal respectively account for [10-20]% and [0-5]% of total IAM sales of LV automotive compressors. The proposed transaction is therefore unlikely to lead to the creation, or a significant strengthening, of any dominant position on the part of Mahle, nor is it likely to lead to the elimination of a significant competitive constraint that the parties active in these markets currently face.
- (39) What is more, according to information provided by the parties, several strong competitors will continue to exert a competitive constraint on Mahle post-completion of the proposed transaction, including Denso, Valeo, Halla Visteon and Sanden.
- (40) In addition, Mahle currently does not manufacture compressors at all and it is therefore only active in the IAM as a reseller thereof. This dependency on third-party suppliers is a factor that renders it further unlikely that the proposed transaction would give rise to any horizontal non-coordinated effects on the markets for the sale of LV automotive compressors to the IAM in Denmark and Germany.
- (41) In light of all of the foregoing, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal non-coordinated effects arising in the markets for the sale of LV automotive compressors to the IAM in Denmark and Germany.

5.2. Horizontal coordinated effects

- (42) In order for a concentration to be capable of giving rise to competition concerns resulting from coordinated effects, it must increase the likelihood that firms are able to coordinate or make coordination easier, more stable or more effective.
- (43) In that regard, it should be noted that Delphi Thermal's shares of the various markets that are affected by the proposed transaction are limited and are, accordingly,

³⁰ Responses to the Commission's questionnaire to competitors, questions 23 and 24; Responses to the Commission's questionnaire to customers, questions 29-32.

³¹ The parties submit that Delphi Thermal manufactures and sells exclusively LV compressors in the EEA. No overlap between the parties' activities in the supply of HCV compressors to the IAM therefore exists.

unlikely to lead to a significant increase of (collective) market power; the three largest players currently already account for between 60% and 80% of all affected markets. What is more, Delphi Thermal does not constitute a recent entrant that has gained significant market share over the past years. The parties' OEM customers furthermore did not raise any concern involving coordinated effects during the Commission's market investigation and rather seemed to consider Delphi Thermal as one of the weakest of the five major suppliers active in the affected markets. The proposed transaction would accordingly be unlikely to significantly increase the ability to coordinate.

- (44) Furthermore, based on the parties' win/loss data, the Commission notes that Delphi Thermal's impact on the market seems limited because of the fact that it did not participate in a significant number of tenders for automotive thermal products that took place during the period 2012 to 2014. In fact, the parties indicate that Mahle and Delphi Thermal have participated in the same tender only on [less than 10] occasions during that same period in relation to which the parties were, moreover, equally successful. At the same time, Mahle indicates that, during the period 2012-2014, it participated in a total of around [more than 100] tenders for automotive thermal products in the EEA.
- (45) Although some of the characteristics of the various markets for the supply of automotive thermal products could generally be considered conducive to coordination (such as the existence of relatively homogenous products, a degree of symmetry between the largest suppliers in the various relevant markets and a lack of regular entry) the Commission considers, in light of all of the foregoing, that it is unlikely that coordinated effects would result from the proposed transaction.

5.3. Vertical non-coordinated effects

- (46) Since the parties' combined position in the manufacture and supply of LV charge air coolers exceeds 30%, a market situated upstream of the one on which HBPO is active, the proposed transaction gives rise to a vertically affected market.³²
- (47) In any case, the proposed transaction does not raise serious doubts as to its compatibility with the internal market insofar as this vertical relationship is concerned, given that: (i) it is largely pre-existent, with the addition of Delphi's activities only leading to a small increment of [5-10]% in the parties' upstream position; (ii) several competitors remain both at the upstream as well as at the downstream level, which could counteract any attempted input or customer foreclosure strategies; (iii) the parties explain that the relevant OEM customers of front-end modules generally determine in their contracts with suppliers of front-end modules which input suppliers are to be used ('directed buying'), a factor limiting the ability and the incentive to engage in both input and customer foreclosure (HBPO would be forced to continue sourcing components from the parties' upstream competitors), and; (iv) no concerns were raised in relation to these vertically affected markets during the Commission's market investigation carried out as part of its assessment of the proposed transaction.

³² The Parties estimate that the market share of HBPO on the downstream market is between [20-30]% and [30-40]% in the EEA and between [10-20]% and [20-30]% worldwide.

6. CONCLUSION

(48) For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission
(Signed),
Margrethe VESTAGER
Member of the Commission