



EUROPEAN COMMISSION
DG Competition

***Case M.8102 - VALEO / FTE
GROUP***

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: 13/10/2017

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Brussels, 13.10.2017
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the Notifying Party

Dear Sir,

**Subject: Case M.8102 – Valeo / FTE Group
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 7 September 2017 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which Valeo Holding GmbH (Germany), controlled by Valeo S.A. ("Valeo" or "the Notifying Party", France), intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of FTE Group Holding GmbH ("FTE" or "the Target", Germany) by way of purchase of shares ("the Proposed Transaction").³ Valeo and FTE are collectively designated hereinafter also as "the Parties to the Proposed Transaction" or "the Parties" whilst the undertaking that would result from the Proposed Transaction is referred to as "the new entity".

1 THE PARTIES AND THE OPERATION

- (2) **Valeo** is active in the design, manufacture and sale of automotive equipment, including in particular thermal systems, powertrain systems, comfort and driving assistance systems, and visibility systems.
- (3) **FTE** is active in the design, manufacture and sale of (i) clutch actuation products; (ii) brake actuation products; (iii) electric transmission oil pumps and other components for

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 305, 15.09.2017, p. 18.

gearboxes and powertrains based on electro-hydraulic technology. FTE is also active in the remanufacturing of brake calipers. Since 2013, FTE is fully owned by Falcon (BC) Luxco S.C.A. ("Bain Capital").

- (4) On 2 June 2016, Valeo entered into an agreement with Bain Capital for the purchase of the whole of the share capital of FTE, which would result in the acquisition by Valeo of sole control over FTE. The Proposed Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
- (5) The Proposed Transaction was initially notified to the European Commission on 10 October 2016. That notification was withdrawn on 29 November 2016 after the Commission informed the Notifying Party following its preliminary investigation that the Transaction would raise serious doubts as to its compatibility with the internal market. On 30 November / 1 December 2016, the Parties entered into an amendment to the sale and purchase agreement intended to extend the drop dead date and allow the Parties to submit a revised notification to the European Commission in order to seek clearance of the Proposed Transaction. This notification was submitted on 7 September 2017.

2 UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Valeo: EUR 16 519 million; FTE: EUR 551.3 million). Each of them has a Union-wide turnover in excess of EUR 250 million (Valeo: EUR [...]; FTE EUR: [...]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

3 RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

- (7) The Parties' activities mainly overlap in the production and sales of passive hydraulic clutch actuator modules and components, both for the original equipment manufacturer market (components to be installed on the vehicle upon first assembly ["OEM"] or intended as original spare parts ["OES"]) and the independent aftermarket ("IAM").
- (8) Both Parties are also active on an IAM trading market, on which manufacturers buy and sell their components to other suppliers in order to complete the product range they offer to the IAM customers. Additionally, Valeo sells IAM clutch actuator kits. Depending on the specific kit, these include one or more components of a passive hydraulic actuation system that are manufactured by the Parties.

Clutch actuators

- (9) Clutch actuators are part of the transmission system of a vehicle, which is part of a vehicle's powertrain system. The transmission system transfers the power generated by the vehicle's engine to its wheels. Within the transmission system, the actuators are modules used to engage and disengage the clutch in order to change gear.
- (10) The technical functioning of actuators is different in manual and automatic transmission systems. In manual transmission systems, a single actuator is used to transfer the pressure exerted by the driver's foot on the clutch pedal to the clutch, allowing the separation of the engine and the transmission. In automatic transmission systems, several actuators, operated by an electronic device called the "transmission control unit", are needed to engage the

clutch system, thereby eliminating the need for a clutch pedal and a gear lever. Clutch actuators can therefore be segmented into two main categories:

- (1) passive actuators, which are activated by the pressure exerted by the driver's foot and can only be used with manual transmissions; and,
 - (2) active actuators, which are activated by the power generated by an electric motor and can be used only with automated transmissions.
- (11) Within passive clutch actuators a further distinction could be drawn between:
- (1) hydraulic actuators, which engage the clutch using hydraulic pressure; and,
 - (2) mechanical actuators, which use a steel cable that is directly connected to both the pedal and the fork, to transmit the pressure exerted by a driver's foot on the pedal to a fork and a release bearing, which is attached to the clutch.

Passive hydraulic clutch actuators

- (12) The Parties' activities overlap as regards the production and sale of passive hydraulic clutch actuators.
- (13) As explained above, passive hydraulic clutch actuators are used only in manual transmission and are composed of different elements, as detailed in the picture below:

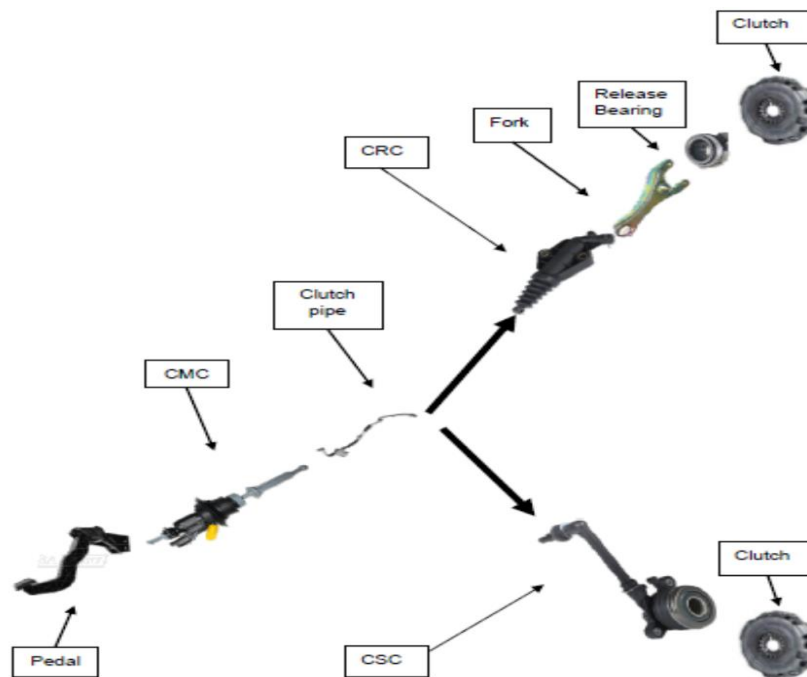


Figure 3. A Passive Hydraulic Actuator

Figure 1: Passive hydraulic clutch actuator; Source: Form CO

- (14) As shown above, the clutch pedal (operated by the driver) is directly connected by a push rod to a Clutch Master Cylinder ("CMC"). When pushing the clutch pedal, a piston inside the CMC is moved by the push rod and activates a hydraulic pressure, allowing the distribution of a fluid volume. The fluid volume circulates through the clutch pipe, regulated by a damper, and is transmitted either:

- (1) to a Concentric Release Cylinder ("CRC"), a piston connected to the clutch pipe, which receives the hydraulic pressure sent by the CMC and applies it on a fork. This fork is then connected to the clutch through a release bearing, allowing it to engage and disengage the clutch⁴ (i.e. semi-hydraulic passive hydraulic actuators); or
- (2) to a Concentric Slave Cylinder ("CSC"), a cylinder integrating a release bearing that is directly connected to the clutch, which receives the hydraulic pressure sent by the CMC and applies it directly on the clutch (i.e. full-hydraulic passive hydraulic actuators).

3.1 Product market definitions

3.1.1 Automotive components in general

- (15) In past decisions on automotive components, the Commission has consistently regarded each component as constituting a distinct product market.⁵ The Commission has also previously identified separate relevant product markets depending on the channel into which the components are sold, as well as on the type of vehicle they are intended for.
- (16) First, as regards the possible distinction between markets for automotive components according to distribution channels, the Commission concluded in previous decisions that the markets for automotive components are to be further divided into: (i) products for original equipment manufacturers ("OEM"), including products for the original equipment suppliers ("OES"), i.e. replacement parts sold to the OEM manufacturers (throughout this decision the sales to the OEM and the OES are jointly referred to as "OEM"); and (ii) replacement parts sold to the independent aftermarket ("IAM") which consists of independent wholesalers, fast-fitters, centralized purchasing groups and such.⁶ The Notifying Party agrees with this market definition, which is retained for the case at hand.
- (17) The Parties supply passive hydraulic clutch actuators for both the OEM and the IAM channels.
- (18) Second, as regards the segmentation of the relevant product market according to the type of vehicles the components are intended for, the Commission has consistently considered separate relevant product markets for (i) components for passenger cars and light commercial vehicles ("LCV") and (ii) components for heavy duty commercial vehicles, including trucks.⁷ The Notifying Party agrees with this segmentation. As Valeo does not produce actuators for heavy vehicles, the Parties' activities only overlap as regards

⁴ As the release bearing contacts the pressure plate's release fingers, it begins to rotate with the pressure plate assembly. The release bearing continues to move forward, and the pressure on the release levers or fingers causes the force of the pressure plate's spring to move away from the clutch facing. To engage the clutch, the clutch pedal is released and the release bearing moves away from the pressure plate. This action allows the pressure plate's springs to force against the clutch facing, engaging the clutch to the flywheel. It is the fork that more specifically pushes the release bearing toward the flywheel. Once the clutch is fully engaged, the release bearing is normally stationary and does not rotate with the pressure plate.

⁵ See Case No. COMP/M.7893 – *Plastic Omnium / Faurecia Exterior Automotive Business*; Case No. COMP/M.6714 - *U-Shin / Valeo CAM*; Case No. COMP/M.6083 - *Fiat / GM / VM Motori JV*; Case No. COMP/M.6045 - *JCI / CRH*; Case No. COMP/M.5930 - *JCI / Michel Thierry Group*; Case No. COMP/M.4524 - *Nemak / Hydro Castings*.

⁶ See Case No. COMP/M.6714 - *U-Shin / Valeo CAM*; Case No. COMP/M.5799 - *Faurecia / Plastal*; Case No. COMP/M.3789 - *Johnson Controls / Robert Bosch / Delphi SLI*; Case No. COMP/M.3622 - *Valeo / Engel*; Case No. COMP/M.3436 - *Continental / Phoenix*; Case No. COMP/M.2535 - *Sogefi / Filtrauto*; Case No. COMP/M.2366 - *Denso / MMC*; Case No. COMP/M.2036 - *Valeo / Labinal*; Case No. IV/M.1245 - *Valeo / ITT Industries*.

⁷ See Case No. COMP/M.6714 - *U-Shin / Valeo CAM*; Case No. COMP/M.4456 - *Mahle / Dana EPG*; Case No. COMP/M.3972 - *TRW Automotive / Dalphi Metal Espana*; Case No. COMP/M.2036 - *Valeo / Labinal*.

passenger cars and LCVs. Hence, for the purpose of this decision, the relevant market with regard to the type of vehicles the components are intended for is the market for components for passenger cars and LCVs. Passenger cars and LCVs are jointly referred to as "light vehicles" throughout this decision.

3.1.2 OEM passive hydraulic actuator modules and components for light vehicles

3.1.2.1 Active actuators and passive actuators

The Notifying Party's view

- (19) As regards the OEM market, the Notifying Party considers different possible segmentations of the product market.
- (20) The Notifying Party submits that active actuators and passive actuators belong to different product markets, for the following reasons:
- (21) First, active actuators include more sophisticated components which require specific electrical, mechanical and electronics know-how. Passive actuators on the contrary are mostly composed of more basic technology components.
- (22) Second, active actuators are significantly more expensive than passive actuators; whereas prices for active actuators range from EUR 100 to EUR 300, prices for passive actuators vary between EUR 10 and EUR 30.
- (23) Third, suppliers for passive and active actuators are not necessarily the same.

The Commission's assessment

- (24) For the reasons set out below, the Commission takes the view that passive and active clutch actuators form part of distinct product markets.
- (25) With reference to demand side considerations, the market investigation indicated that active actuators, which can only be used in automated transmissions, cannot be considered suitable for substituting passive actuators, which can only be used in manual transmissions.⁸ According to respondents to the market investigation, this is both because of significant price differences and differences in the intended use of the products.
- (26) As regards the technical considerations, OEM customers responding to the market investigation indicated that the underlying technology for active actuators and passive actuators is different. Therefore active and passive actuators cannot be used interchangeably with the same gearbox.⁹
- (27) In terms of prices, the market investigation indicated that, as submitted by the Notifying Party, active actuators are significantly more expensive than passive actuators, also as a consequence of the fact that they are technologically more complex products.
- (28) As regards the supply side, the market investigation indicated that the production process of active and passive actuators is different and that manufacturers need to employ different production lines.

⁸ Q1 Questionnaire to customers OEM/OES, questions 4 and 5.

⁹ Q1 Questionnaire to customers OEM/OES, questions 4 and 5.

- (29) In light of the foregoing and the results of the market investigation, the Commission takes the view that active clutch actuators and passive clutch actuators constitute separate product markets. As the Parties' activities do not overlap in the production and sale of active actuators, only the market for passive clutch actuators will be further analysed in this decision.

3.1.2.2 Passive hydraulic clutch actuators and mechanical clutch actuators

The Notifying Party's view

- (30) The Notifying Party submits that it is appropriate to further segment the market for the production and sale of passive clutch actuators into passive hydraulic actuators and mechanical actuators, because of technology and price differences and limited supply substitutability between them.
- (31) Under this market segmentation, the Parties only have overlapping activities in the EEA on the market for passive hydraulic clutch actuators. For that reason, the Notifying Party considers the relevant market to be the OEM market for passive hydraulic actuators for light vehicles.

The Commission's assessment

- (32) For the reasons set out below, the Commission takes the view that mechanical actuators and passive hydraulic actuators form part of different product markets.
- (33) First, although serving similar purposes, i.e. the operation of manual transmissions, mechanical actuators function according to a different mechanism compared to passive hydraulic actuators. A mechanical actuator more specifically pushes on a component which engages the clutch, whereas a hydraulic actuator applies hydraulic pressure on a component in order to engage the clutch.
- (34) More precisely, in a mechanical actuator a steel cable, directly connected to the pedal, transmits the pressure exerted by the driver's foot on the pedal to a fork and a release bearing attached to the clutch. Mechanical actuators are based on a very simple technology and offer limited comfort to the driver. Mechanical actuators are mainly used in China and emerging markets. In the EEA mechanical actuators have been replaced over time by passive hydraulic actuators and now constitute only 2% of the total actuator market for manual transmissions.¹⁰
- (35) Passive hydraulic clutch actuators function according a different mechanism. As explained above in paragraph 14, passive hydraulic actuators employ hydraulic pressure in order to activate the clutch.
- (36) Second, respondents to the market investigation indicated that the manufacturing passive hydraulic clutch actuators is highly complex and requires specific know-how.
- (37) Finally the average price of a mechanical actuator is significantly lower than that of a passive hydraulic actuator. According to the information provided by the Notifying Party a

¹⁰ Form CO, paragraph 73.

passive hydraulic clutch actuator costs on average more than double the average price of a mechanical actuator.¹¹

- (38) In light of the foregoing and the results of the market investigation, the Commission takes the view that mechanical clutch actuators and passive hydraulic clutch actuators constitute separate product markets. As the Parties' activities do not overlap in the production and sale of mechanical actuators, only the market for passive hydraulic clutch actuators will be further analysed in this decision.

3.1.2.3 Passive hydraulic clutch actuators systems and individual components

The Notifying Party's view

- (39) The Notifying Party submits that the relevant product market is the market for passive hydraulic clutch actuators sold as a system and that it would be inappropriate to further segment the product market into the various components of a passive hydraulic clutch actuator system, i.e. Clutch Master Cylinder ("CMC"), Concentric Release Cylinder ("CRC"), Concentric Slave Cylinder ("CSC"), clutch pipe¹², fork¹³ and release bearing.¹⁴
- (40) According to the Notifying Party this is so, first, because in almost half of the tender instances, car manufacturers request bids for the full passive hydraulic actuation module or at least two components together.
- (41) Second, the Notifying Party submits that such segmentation into components would be inappropriate as the Commission has often considered that the module, and not its individual components, constitutes the relevant product market in the car part sector.¹⁵

The Commission's assessment

- (42) For the reasons set out below, the Commission takes the view that it is appropriate to consider separate product markets both for the passive hydraulic clutch actuators systems as a whole and for each of the components thereof.
- (43) The market investigation supports the view that passive hydraulic actuator systems form a separate relevant product market from those for individual components.¹⁶
- (44) From the supply side, the market investigation indicated that manufacturing a complete passive hydraulic actuator system requires specific engineering expertise as knowledge of

¹¹ Form CO, paragraph 74. According to the information submitted by the Notifying Party, a mechanical actuator costs on average [...] whilst a passive hydraulic actuators costs [...].

¹² A clutch pipe transfers the pressure and volume flow from the CMC to the CRC/CSC. The clutch pipe is composed of a pipe and a damper, which aims to regulate the pressure and volume flow generated by the CMC. The damper absorbs disruptive vibrations, allows for an adapted volume increase, and therefore makes it more comfortable to use the clutch pedal.

¹³ The fork is actuated by the fluid pressure from the CRC and pushes the release bearing toward the flywheel in order to engage the clutch.

¹⁴ Neither Valeo nor FTE manufacture forks and release bearings. The Parties purchase them from independent suppliers and assemble them with CMCs and CRCs into passive hydraulic actuator modules.

¹⁵ See Case No. COMP/M.5518 - *Fiat / Chrysler*, paragraphs 17-19; Case No. IV/M.1291 - *Bosch / ZF*, paragraphs 10 and 12; Case No. COMP/M.5500 - *General Motors / Delphi Steering Business*, paragraph 13; Case No. COMP/M.7420 - *ZF / TRW*, paragraph 27.

¹⁶ Q2 questionnaire to OEM/OES competitors, question 5.

the entire release system and of adjacent systems is necessary, which a components-only supplier may not have.¹⁷ Indeed, certain suppliers only compete as regards components, and are generally not invited to tenders concerning passive hydraulic actuator modules. A competitor responding to the market investigation indicated that – contrary to the Parties and other competitors – it is only supplying individual components and not the entire passive hydraulic clutch actuator system. This is also confirmed by the analysis of the bidding information relating to tenders in which either of the Parties participated from 2011 to 2017 (the "Bidding Data"). The Bidding Data indicates that in all but 3 tenders for modules only the Parties and LuK competed, whereas fringe competitors such as Aisin and Sachs have been observed only in tenders for individual components.

- (45) From a demand side perspective, customers may decide to only purchase certain individual components rather than entire modules or vice-versa, depending on their purchasing strategy and on their ability to assemble and tune the complete release system themselves. This is supported by the analysis of the Bidding Data submitted in the course of the investigation, which shows that the majority of tenders are for individual components or bundles of at least two components ([...] recorded tenders) rather than for the full module ([...] recorded tenders). This observation indicates that there is a distinct and significant demand for individual components alongside that for the modules.

3.1.2.4 Conclusion on the OEM relevant product markets

- (46) In light of the foregoing, the Commission considers, on the basis of the market investigation results and the other evidence available to it, that the relevant market is at most as wide as the sale of passive hydraulic clutch actuators systems for light vehicles, although a further segmentation can be considered between the sale of passive hydraulic clutch actuators modules and each of the individual components thereof. However, whether the relevant market constitutes a market which includes all the sales of passive hydraulic actuators systems and individual components or has to be segmented further can be left open for the purpose of this decision, as the Proposed Transaction raises serious doubts as to its compatibility with the internal market in relation to the sales of passive clutch actuators irrespective of the exact product market definition.

3.1.3 IAM passive hydraulic actuator modules and components for light vehicles

The Notifying Party's view

- (47) On the IAM, FTE only sells individual components (i.e. CMCs, CRCs and CSCs), whereas Valeo supplies individual components and clutch kits.
- (48) Spare parts sold in the IAM can be original equipment ("OE") components developed for the OEM market or so-called adaptable parts, i.e. parts that are developed for the IAM by other suppliers using a similar technology but which do not meet the same durability and quality standards as the OE parts. Adaptable parts are manufactured and sold by both OE suppliers (for car models for which they are not an OEM supplier) and IAM-only suppliers. According to the Notifying Party, it is generally not possible to distinguish OE parts from adaptable parts, as there are no specific markings in catalogues or on the products themselves that would allow distinction between them. Also, adaptable parts are not necessarily sold at a lower price.¹⁸

¹⁷ Q2 questionnaire to OEM/OES competitors, question 5.1.

¹⁸ Form CO, paragraph 88. Responses to RFIs of 17 and 21 October 2016.

- (49) Like for the OEM market, the Notifying Party submits that there is a relevant IAM for passive hydraulic actuators, but considers that a narrower market definition for CMCs, CRCs and CSCs sold as stand-alone products on the IAM is plausible. Market share data for these segments has thus been submitted.

The Commission's assessment

- (50) The Commission notes that on the IAM segment demand is driven by the need to replace a broken component. Passive hydraulic actuator components can be, and are, replaced separately, without changing the entire module. There is thus specific demand on the IAM for individual components. Indeed, it appears that the entirety of the Parties' IAM sales in the area of passive hydraulic actuators consists of parts sold on a stand-alone basis or, in the case of CSCs, in kits (consisting of a CSC and other parts like a drive plate, cover assembly and DMF) but not of passive hydraulic actuator modules as a whole.¹⁹
- (51) All IAM competitors surveyed in the market investigation indicated that they only sell individual components separately and not entire modules. Furthermore, some IAM suppliers only manufacture and sell certain actuator components: for instance, Metelli only sells CMCs, Donaflex only sells CSCs and Nueva Tecnodelta sells CMCs and CSCs but not CRCs.²⁰
- (52) Therefore, in light of the results of the market investigation and the evidence available to it, the Commission considers, for the purpose of this decision, that there are separate relevant product markets for individual passive hydraulic actuator components, namely CMCs, CRCs and CSCs, sold on the IAM.

3.1.4 Trading market for passive hydraulic actuator components for light vehicles

The Notifying Party's view

- (53) The Notifying Party submits that there is a trading market for passive hydraulic actuator components, which are intended to be resold to IAM distributors or to be included in clutch kits. On this market, OE suppliers usually distribute their own original spare parts and purchase OE and adaptable spare parts from their competitors, or adaptable parts from IAM-specific suppliers or wholesalers in order to complete their product line and be able to propose a full-range of products to their customers, or in order to integrate them in clutch kits. Parts purchased on this market are then resold under the purchaser's own brand name.
- (54) Both Parties are active on this trading market as regards passive hydraulic actuator components.

¹⁹ Form CO, Annex 7.3.1.g.2, 7.3.1.h.2 and 7.3.1.i.2.

²⁰ Q3 questionnaire to IAM competitors, question 4 and 16.

The Commission's assessment

- (55) The Commission has not previously considered a trading market for automotive spare parts destined for sale in the IAM. In the present case, the market investigation has confirmed the existence of exchanges of passive hydraulic actuator components between suppliers on a so-called trading market. On this market, OE suppliers and IAM-specific suppliers sell and purchase spare parts to and from each other with the purpose of extending their product range or sourcing inputs for kits.²¹
- (56) The Commission considers that the trading of passive hydraulic actuator components could be plausibly considered to constitute a relevant product market separate from, and upstream of, that for the supply of spare parts to IAM wholesale distributors. On this trading market, suppliers face different customer groups than in the IAM: buyers of components are primarily other suppliers of spare parts rather than IAM distributors. These purchase components on the trading market in order to complete their product portfolio and be able to offer a complete offering to their customers (IAM distributors). In addition, these products are sourced on an EEA, rather than national, level (see also section 3.2.3).

3.1.5 *The IAM clutch kits for light vehicles*

The Notifying Party's view

- (57) Valeo sells the following types of clutch kits: (i) three-piece kits, composed of a drive plate, a cover assembly and a CSC (for cars equipped with a passive hydraulic actuator) or a release bearing (for cars equipped with a mechanical actuator)²², (ii) dual-mass flywheel ("DMF") kits, including a drive plate, cover assembly, a DMF and a CSC or release bearing, and (iii) four-piece kits, composed of a drive plate, cover assembly, a CSC or release bearing and rigid flywheel instead of a DMF.
- (58) A DMF is a rotating mechanical device used in the clutch system in order to reduce the engine's vibrations, noise and fuel consumption, in particular when the engine runs at low speeds. A rigid flywheel is a device that has the same purpose of reducing the mechanical vibration so as to limit premature wear within the gearbox, but it is based on a different technology than a DMF.²³
- (59) The Notifying Party submits that there is a trend in the IAM towards more sales of kits rather than of individual components: because of the high labour costs involved in replacing individual clutch components, mechanics sometimes recommend changing the entire transmission system at once even if some parts of it are still functioning well, so as

²¹ Q3 Questionnaire to IAM competitors, questions 24 and 25.

²² The release bearing is a component pushed by the fork toward the flywheel. As the bearing contacts the pressure plate's release fingers, it begins to rotate with the pressure plate assembly. The release bearing continues to move forward, and the pressure on the release levers or fingers causes the force of the pressure plate's spring to move away from the clutch facing. To engage the clutch, the clutch pedal is released and the release bearing moves away from the pressure plate. This action allows the pressure plate's springs to force against the clutch facing, engaging the clutch to the flywheel. Once the clutch is fully engaged, the release bearing is normally stationary and does not rotate with the pressure plate.

²³ The DMF technology was developed in the 1980s by LuK, which hold patent rights over it. The rigid flywheel was developed by Valeo as an alternative to DMFs.

to avoid incurring the labour costs of assembling and disassembling the clutch each time a component is broken.²⁴

- (60) The Notifying Party does not submit a precise definition of the relevant kits market, but appears to consider that there are plausible separate markets for three-piece kits and DMF kits (including rigid flywheel kits, which, according to the Notifying Party, are substitutable from a demand-side perspective with actual DMF kits) and has submitted market share data for these segments.

The Commission's assessment

- (61) The market investigation was inconclusive as to whether three-piece kits, DMF kits and rigid flywheel kits constitute distinct relevant markets. However, taking into account that the Parties' activities do not overlap as regards kits and the Proposed Transaction does not raise concerns of a vertical nature, the Commission considers that for the purpose of this decision, the precise market definition with respect to clutch kits can be left open.

3.2 Geographic market definition

3.2.1 OEM passive hydraulic actuator modules and components for light vehicles

The Notifying Party's view

- (62) In line with previous Commission decisions in the automotive components industry,²⁵ the Notifying Party submits that the geographic scope of the OEM market for passive hydraulic actuators is EEA-wide.
- (63) According to the Notifying Party, this is because:
- (1) transportation costs within the EEA are not significant ([0-5]%)
 - (2) there are no other obstacles to intra-EEA trade;
 - (3) prices and delivery conditions are homogeneous within the EEA;
 - (4) purchasers do not source on a purely national basis but rather on an EEA-wide or global basis;
 - (5) similar conditions of competition apply throughout the EEA, because there is extensive inter-state trade and because suppliers tend to serve the entire EEA from only a few plants located within the EEA.²⁶

²⁴ Form CO, paragraph 243.

²⁵ See Case No. COMP/M.4213 - *CAG / Motorola*, paragraph 7; Case No. COMP/M.4161 - *SEI / VWBN*, paragraph 7; Case No. COMP/M.3622 - *Valeo / Engel*, paragraph 15; Case No. COMP/M.3013 - *Carlyle Group / Edscha*, paragraph 10; Case No. COMP/M.1563 - *Ford / Plastic Omnium*, paragraphs 15-16; Case No. IV/M.1466 - *Eaton Corporation / Aeroquip-Vickers*, paragraph 9; Case No. IV/M.1456 - *Dura / Adwes*, paragraph 11; Case No. IV/M.1245 - *Valeo / ITT Industries*, paragraph 20; Case No. IV/M.1196 - *Johnson Controls / Becker*, paragraph 13; Case No. IV/M.1093 - *ECIA / Bertrand Faure*, paragraphs 12-14; Case No. IV/M.937 - *Lear / Keipe*, paragraphs 13-14; Case No. IV/M.861 - *Textron / Kautex*, paragraph 10; Case No. IV/M.768 - *Lucas / Varity*, paragraph 12; Case No. IV/M.686 - *Nokia / Autoliv*, paragraphs 11-12; Case No. IV/M.666 - *Johnson Controls / Roth Frères*, paragraph 17; Case No. IV/M.149 - *Lucas / Eaton*, paragraph 35.

²⁶ Form CO, paragraph 101. Valeo serves the entire EEA from only two manufacturing plants, located in Italy and Turkey. Likewise, FTE serves the EEA from two manufacturing plants, located in Germany and the Czech Republic.

- (64) Additionally, the Notifying Party submits elements to substantiate its claim that the geographic scope of the OEM market for passive hydraulic actuators is larger than the EEA. According to the Notifying Party, this is because (i) in the field of passive hydraulic actuators, [80-90]% of the tenders relate to global platforms and are wider than the EEA, (ii) the Parties and other main suppliers of passive hydraulic actuators export significant volumes from the EEA into Asia and South America, and (iii) transportation costs for passive hydraulic actuators are relatively low (about [0-5]% of their selling price within the EEA and [5-10]-[5-10]% between the EEA and South America or Asia).²⁷

The Commission's assessment

- (65) In line with its past decisional practice on automotive components,²⁸ the Commission takes the view that the OEM markets for passive hydraulic actuators sold in modules, as well as each of the markets for the components, are EEA-wide in scope.
- (66) A large majority of respondents to the Commission's market investigation indicated that they do not purchase OEM passive hydraulic actuator modules or components from suppliers located outside the EEA,²⁹ nor do they invite them to participate in tenders.³⁰ The main reason for sourcing within the EEA is the good reputation of the existing EEA-suppliers and the fact that, due to consumer preferences, the demand and supply for manual transmission systems, and thus for passive hydraulic actuators, mainly lies in the EEA, whereas demand and supply outside the EEA rather focusses on automatic transmission systems.
- (67) In addition, although the majority of customers indicated that transport costs are not as high as to limit their ability to source passive hydraulic actuators from outside the EEA, the supplier's proximity to their manufacturing plants is an advantage.³¹
- (68) Therefore, for the purpose of this decision the Commission considers that the geographic scope of the relevant market for the sale of passive hydraulic modules and components for light vehicles in the OEM market is EEA-wide.

3.2.2 IAM passive hydraulic actuator components for light vehicles

The Notifying Party's view

- (69) The Commission has in the past considered the geographic scope of the various IAM markets to be national.³² The Notifying Party however submits that the relevant geographic market could be wider than national, and possibly EEA-wide, because (i) in the field of passive hydraulic actuators, suppliers are able to deliver spare parts across the EEA, and global and European buying groups represent the major share of the Parties' total sales in

²⁷ Form CO, paragraphs 95, 96, 98.

²⁸ See Case No. COMP/M.4213 - *CAG / Motorola*, paragraph 7; Case No. COMP/M.4161 - *SEI / VWBN*, paragraph 7; Case No. COMP/M.3486 - *Magna / New Venture Gear*, paragraph 25; Case No. COMP/M.3622 -, *Valeo / Engel*, paragraph 15; Case No. COMP/M.3013 - *Carlyle Group / Edscha*, paragraph 10; Case No. COMP/M.2901 - *Magna / Donnelly*, paragraph 12; Case No. COMP/M.1587 - *Dana / GKN*, paragraph 16; Case No. IV/M.1189 - *Teksid / Norsk Hydro Produksjon / Meridian*, paragraph 14.

²⁹ Q1 questionnaire to OEM customers, question 9.

³⁰ Only [...] out of the [...] bids in which one of the Parties took part during 2011-2016 included a non-European company among bidders, 9 of which were for clutch pipes only.

³¹ Q1 questionnaire to OEM customers, question 10 and 12.

³² Case No. COMP/IV.1245 - *Valeo / ITT Industries*, paragraph 21.

the IAM (i.e. around [...] % for Valeo and [...] % for FTE), (ii) suppliers located outside the EEA are able to and do supply passive hydraulic actuator spare parts in the EEA, (iii) the Parties also export passive hydraulic actuation parts from the EEA to for instance South America, and (iv) the main EU suppliers of passive hydraulic actuators in the IAM are organised not only on the basis of national but also transnational structures.³³

- (70) The Notifying Party has nevertheless submitted market shares on both an EEA and a national basis for each of the IAM product markets affected by the Proposed Transaction.

The Commission's assessment

- (71) The evidence submitted by the Parties and collected in the market investigation suggests that on the IAM competition takes place primarily on a national level. Both the Parties and their competitors confirmed that prices are determined at the level of each country,³⁴ resulting in significant differences between the prices at which passive hydraulic components are sold in each country.³⁵
- (72) As regards international buying groups, these do not purchase components as such from suppliers, nor are they in charge of negotiating prices on behalf of their members. The Commission in that respect refers to the Notifying Party's explanation that while buying groups may be involved in negotiating certain discounts or rebates, prices are determined in contracts concluded between individual members and suppliers "at the local level, taking into account the market conditions that may exist locally".³⁶
- (73) Furthermore, the Commission notes that not all suppliers are active in all national markets.³⁷ As regards the organisation of IAM activities of suppliers active across multiple countries, the majority of participants to the market investigation indicated that their IAM activities are organised on the basis of both national and regional or EEA entities. Only one competitor, which has limited activities on the IAM, indicated that it supplies customers on the basis of regional entities only.³⁸
- (74) On the demand side, customers indicated that they source passive hydraulic actuators and components both at national and at EEA level.³⁹
- (75) In light of the results of the market investigation and the evidence available to it, the Commission considers that the geographic scope of IAM markets is likely not wider than national. While there are suppliers that are active across the EEA, and while some customers purchase outside their country, conditions of competition and prices may differ significantly across countries. Therefore, for the purpose of this decision, the Commission

³³ For instance, Valeo Service (which is the whole of Valeo's subsidiaries located in various countries, active on the IAM) is organized on the basis of the following transnational clusters: Benescan (Belgium, Denmark, Luxembourg, Netherlands, Finland, and Sweden); VSEE (Czech Republic, Slovakia, Poland, Bulgaria, Estonia, Latvia, Lithuania, Hungary, and Romania); DACH (Germany and Austria); VSAT (Croatia, Italy, Cyprus, Greece, Malta, and Slovenia); VSUK (UK and Ireland); VSE (Spain and Portugal); and VSF (France).

³⁴ Form CO, paragraph 305. Q3 questionnaire to IAM competitors, question 15.

³⁵ E.g. the average price of CSCs sold by Valeo ranges between [...] in Austria to [...] EUR in France, the average price of a CMC sold by FTE ranges between [...] in Croatia to [...] in Ireland. Parties' response to RFI of 26 October 2016.

³⁶ Form CO, paragraph 305. Response to RFI of 25 October 2016.

³⁷ Q3 questionnaire to IAM competitors, question 1.

³⁸ Q3 questionnaire to IAM competitors, question 13.

³⁹ Q4 questionnaire to IAM customers, question 12.

takes the view that the relevant geographic market for the manufacture and sale of passive hydraulic actuator components is national in scope.

3.2.3 Trading market for passive hydraulic actuator components for light vehicles

The Notifying Party's view

- (76) The Notifying Party submits that the trading market for passive hydraulic actuator components is at least EEA-wide in scope, as suppliers usually source passive hydraulic components at the EEA level.⁴⁰

The Commission's assessment

- (77) The Commission has not previously considered a trading market for automotive spare parts destined for sale in the IAM. Based on information submitted by the Parties and that collected in the market investigation, the main suppliers on the trading market for passive hydraulic actuator components primarily are FTE, Valeo, LuK and Sachs, which source from each other on an EEA-wide basis.⁴¹
- (78) The geographic scope of the trading market can therefore be plausibly defined as EEA-wide.

3.2.4 IAM DMF kits and components for light vehicles

The Notifying Party's view

- (79) The Notifying Party does not put forth a precise geographic market definition as regards kits.

The Commission's assessment

- (80) In line with its decisional practice in the area of manufacturing and supply of spare parts to IAM customers⁴² and with its assessment in respect of passive hydraulic actuator components as described in paragraphs (71) to (75), the Commission considers that the relevant geographic market for the manufacture and sale of clutch kits can plausibly be defined as national in scope. The customers and procurement methods are the same as in the case of passive hydraulic actuator components. Suppliers of clutch kits on the IAM are organised on the basis of national entities.⁴³

4 COMPETITIVE ASSESSMENT

4.1 Introduction

- (81) Under Articles 2(2) and 2(3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the

⁴⁰ For instance, in the [details on supply arrangements].

⁴¹ Form CO, paragraphs 102, 255, 256. Q3 questionnaire to IAM competitors, questions 24 and 25.

⁴² Case No. COMP/IV.1245 - Valeo / ITT Industries, paragraph 21.

⁴³ Q3 questionnaire to IAM competitors, question 13.

internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

- (82) As regards the assessment of horizontal overlaps, the Commission guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings⁴⁴ (the "Horizontal Merger Guidelines") distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects. Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In this regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.
- (83) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Not all of these factors, indicated in the Horizontal Merger Guidelines as relevant to the analysis of non-coordinated effects, need to be present to make significant non-coordinated effects likely. Also, the list of factors is not exhaustive.
- (84) A significant impediment to effective competition can result in particular from the creation or strengthening of a dominant position. Also, according to recital 25 of the Merger Regulation, a significant impediment to effective competition can also be established from anticompetitive effects from the non-coordinated behaviour of undertakings which would not have a dominant position on the market concerned.
- (85) On the basis of these elements, the Commission has carried out an extensive competitive assessment of the Proposed Transaction in order to assess whether it raises serious doubts with regard to its compatibility with the internal market and therefore, whether proceedings need to be initiated pursuant to Article 6(1)(c) of the Merger Regulation.

4.2 Non-coordinated horizontal effects

4.2.1 *OEM passive hydraulic actuator ('PHAs') modules and components for light vehicles*

- (86) The Proposed Transaction leads to a further concentration on already highly concentrated markets. It reinforces the dominant market position of the Target by removing an important and close competitor on the markets for OEM passive hydraulic actuator modules and components for light vehicles in the EEA. Switching, barriers to entry and expansion as well as potential competition and countervailing buyer power are not likely to constitute sufficient constraints on the new entity.

⁴⁴ OJ C31, 5.2.2004, p. 5.

4.2.1.1 Market structure

OEM PHAs

- (87) The Notifying Party estimates the structure of the OEM market for PHAs for light vehicles in the EEA over the last years as set out below:

Table 1: OEM PHAs for light vehicles in the EEA by revenue								
	2013		2014		2015		2016	
	M €	%	M €	%	M €	%	M €	%
Valeo	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%
FTE	[...]	[60-70]%	[...]	[50-60]%	[...]	[50-60]%	[...]	[50-60]%
Combined	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
LuK	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Sachs	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Aisin	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

- (88) The Notifying Party estimates the structure of the market for OEM PHAs for light vehicles in the EEA for the coming years as set out below:

Table 2: OEM PHAs for light vehicles in the EEA by revenue								
	2017		2018		2019		2020	
	M €	%	M €	%	M €	%	M €	%
Valeo	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%	[...]	[20-30]%
FTE	[...]	[50-60]%	[...]	[50-60]%	[...]	[50-60]%	[...]	[40-50]%
Combined	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
LuK	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%	[...]	[20-30]%
Sachs	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Aisin	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

OEM CMCs

- (89) The Notifying Party estimates the structure of the market for OEM CMCs for light vehicles in the EEA over the last years as set out below:

Table 3: OEM CMCs for light vehicles in the EEA by revenue								
	2013		2014		2015		2016	
	M €	%	M €	%	M €	%	M €	%
Valeo	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
FTE	[...]	[60-70]%	[...]	[60-70]%	[...]	[50-60]%	[...]	[60-70]%
Combined	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
LuK	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Sachs	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Aisin	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

- (90) The Notifying Party estimates the structure of the market for OEM CMCs for light vehicles in the EEA for the coming years as set out below:

Table 4: CMCs for light vehicles in the EEA by revenue								
	2017		2018		2019		2020	
	M€	%	M€	%	M€	%	M€	%
Valeo	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%	[...]	[20-30]%
FTE	[...]	[60-70]%	[...]	[60-70]%	[...]	[50-60]%	[...]	[50-60]%
Combined	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
LuK	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Sachs	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Aisin	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

OEM CRCs

- (91) The Notifying Party estimates the structure of the market for OEM CRCs for light vehicles in the EEA over the last years as set out below:

Table 5: OEM CRCs for light vehicles in the EEA by revenue								
	2013		2014		2015		2016	
	M €	%	M €	%	M €	%	M €	%
Valeo	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%
FTE	[...]	[60-70]%	[...]	[60-70]%	[...]	[60-70]%	[...]	[60-70]%
Combined	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
LuK	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Sachs	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Aisin	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

- (92) The Notifying Party estimates the structure of the market for OEM CRCs for light vehicles in the EEA for the coming years as set out below:

Table 6: OEM CRC for light vehicles in the EEA by revenue								
	2017		2018		2019		2020	
	M€	%	M€	%	M€	%	M€	%
Valeo	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%	[...]	[20-30]%
FTE	[...]	[50-60]%	[...]	[50-60]%	[...]	[40-50]%	[...]	[40-50]%
Combined	[...]	[60-70]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
LuK	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Sachs	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Aisin	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

OEM CSCs

- (93) The Notifying Party estimates the structure of the market for OEM CSCs for light vehicles in the EEA over the last years as set out below:

Table 7: OEM CSCs for light vehicles in the EEA by revenue								
	2013		2014		2015		2016	
	M €	%	M €	%	M €	%	M €	%
Valeo	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[30-40]%
FTE	[...]	[50-60]%	[...]	[50-60]%	[...]	[40-50]%	[...]	[40-50]%
Combined	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
LuK	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]7%
Sachs	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Aisin	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5].%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

- (94) The Notifying Party estimates the structure of the market for OEM CSCs for light vehicles in the EEA for the coming years as set out below:

Table 8: OEM CSC for light vehicles in the EEA by revenue								
	2017		2018		2019		2020	
	M€	%	M€	%	M€	%	M€	%
Valeo	[...]	[20-30]%	[...]	[10-20]%	[...]	[20-30]%	[...]	[20-30]%
FTE	[...]	[40-50]%	[...]	[40-50]%	[...]	[30-40]%	[...]	[30-40]%
Combined	[...]	[60-70]%	[...]	[60-70]%	[...]	[60-70]%	[...]	[60-70]%
LuK	[...]	[20-30]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Sachs	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Aisin	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

OEM Clutch Pipes

- (95) The Notifying Party estimates the structure of the market for OEM Clutch Pipes for light vehicles in the EEA over the last years as set out below:

Table 9: OEM Clutch Pipes for light vehicles in the EEA by revenue								
	2013		2014		2015		2016	
	M €	%	M €	%	M €	%	M €	%
Valeo	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
FTE	[...]	[60-70]%	[...]	[60-70]%	[...]	[60-70]%	[...]	[60-70]%
Combined	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
LuK	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Sachs	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Aisin	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

- (96) The Notifying Party estimates the structure of the market for OEM Clutch Pipes for light vehicles in the EEA for the coming years as set out below:

Table 10: OEM Clutch Pipes for light vehicles in the EEA by revenue								
	2017		2018		2019		2020	
	M€	%	M€	%	M€	%	M€	%
Valeo	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%
FTE	[...]	[60-70]%	[...]	[50-60]%	[...]	[50-60]%	[...]	[50-60]%
Combined	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
LuK	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Sachs	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Aisin	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nabtesco	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TCIC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
APG	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (excluding suppliers of forks and bearings)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Form CO

- (97) It follows from the above that the Proposed Transaction would create the largest player on both the market for PHAs sold in modules and on each of the markets for PHA components, with a market share that is often more than four times higher than the market share of the second largest player (LuK).
- (98) The Parties' combined market share on the markets for PHAs sold in modules and the markets for individual components has been consistently above [70-80]% over the last years and is expected to remain above this level over the next years. The market share of

LuK has been consistently below [20-30]% (except on the market for CSCs) over the last years and is expected not to exceed that level in the following years.

- (99) The increment that results from the Proposed Transaction is comparable to the market share of LuK and significantly higher than that of Sachs or Aisin, which are the only other market players with shares above [0-5]%. The HHI index for the overall PHAs market resulting from the Proposed Transaction will be [5900-6000] with a delta of [2200-2300].
- (100) The market share estimates for the respective components of PHAs show a similar picture.
- (101) In light of the above information, this Decision will examine whether due to the significant market position of the one or both Parties, the Proposed Transaction would lead to anticompetitive effects with regard to the OEM market for PHAs.

4.2.1.2 *Closeness of competition*

The Notifying Party's view

- (102) The Notifying Party submits that, following the Proposed Transaction, the new entity will face competition from numerous established suppliers. According to the Notifying Party, these established competitors are LuK, Sachs and Aisin. Moreover, the Notifying Party submits that the Parties are not close competitors, because the Parties' Bidding Data for EEA tenders between 2011 and 2017 shows that FTE and LuK met in the large majority of tenders ([...]), while Valeo participated only in [...] tenders, in all of which it met LuK and in most of them also FTE ([...]).⁴⁵

The Commission's assessment

- (103) The Commission considers that the Proposed Transaction would reduce the number of significant players in the market for PHA modules and components from three to two. Currently, FTE, Valeo and LuK are the main competitors in this market, while post-Transaction only the new entity and LuK would remain as significant players. The market shares estimates provided by the Notifying Party suggest that currently FTE, Valeo and LuK account for more than [90-100]% of the market while all the remaining players together account for less than [10-20]% of the market.
- (104) The results of the market investigation have confirmed that LuK has been competing in tenders with both Parties over the last three years.⁴⁶ This is also in line with the Bidding Data provided by the Notifying Party, which shows that both Parties met LuK in almost all the tenders in which they participated.
- (105) Contrary to the Notifying Party's submission, the market investigation suggests that Sachs is not competing effectively with the Parties and LuK in the EEA.⁴⁷ While it may continue to serve some legacy business relationships, Sachs does not seem to actively compete for market share in this product market any longer. This is also in line with Sachs' low market share (of below [0-5]%) over the last four years and the fact that – according to the Bidding Data provided by the Notifying Party – Sachs participated in only [...] of the [...] tenders, of which it won only two.

⁴⁵ Form CO, Annex 7.3.2.a.

⁴⁶ Q2 questionnaire to OEM customers, questions 13-15.

⁴⁷ Q2 questionnaire to OEM customers, questions 13-20.

- (106) The market investigation further suggests that Aisin is not competing effectively with the Parties and LuK in the EEA.⁴⁸ This is in line with the Bidding Data, which shows that none of the Parties met Aisin in any of the tenders in which they participated in the last years. This is also in line with the low market share of Aisin, of below [0-5]% over the last four years. The market investigation suggests that this is the case because Aisin's customers are mostly Asian car manufacturers with a strong focus on cars fitted with automatic transmission systems. Therefore, Aisin does not have a strong focus on manual transmission systems in general and passive hydraulic actuation systems in particular. Although Aisin produces some of these systems, mainly for cars destined for the EEA market, the products are considered less sophisticated than those of the European competitors. Moreover, it should be noted that some car manufacturers may not consider Aisin as an independent supplier, because they are partly owned by Toyota, which holds a 30% stake in this company.⁴⁹
- (107) In conclusion, based on the evidence available to it, the Commission finds that the Parties are two of the three main competitors in the EEA market for PHA modules and components, and that the competitive constraint represented by suppliers other than LuK is very limited.

4.2.1.3 *Switching*

The Notifying Party's view

- (108) The Notifying Party submits that customers could reallocate some of the new entity's volumes to alternative competitors, if they were dissatisfied with its prices, quality or conditions of delivery.⁵⁰ While contracts generally last for five years, they are eligible for early termination. Whereas OEMs may need up to two years to reallocate an on-going platform, suppliers can adjust their equipment within several days or weeks if significant changes to the equipment are necessary. The costs on the part of the OEM may range from EUR 0.5 million for adjustments to existing equipment to EUR 2.5 million for a new production line, which includes approximately EUR 1 million for the development phase and up to EUR 1.5 million for the production line. The Notifying Party submits that suppliers can and do switch. In particular, the Notifying Party mentioned the example of Renault / Nissan, which tendered a contract for a platform for 3 years in 2012 and then re-tendered the contract in 2015.⁵¹

The Commission's assessment

- (109) The Commission considers it unlikely that - by switching suppliers - customers will be able to counterbalance the elimination of the important competitive constraint brought about by the Proposed Transaction.
- (110) As shown above, the Proposed Transaction reduces the number of significant suppliers from three to two on the OEM market. Moreover, the Notifying Party itself concedes that OEMs may need up to two years to reallocate an ongoing platform.⁵² The Notifying Party further submits that switching costs may deter customers in cases where they tender very

⁴⁸ Q2 questionnaire to OEM customers, questions 13-20.

⁴⁹ Form CO, paragraph 157.

⁵⁰ Form CO, paragraph 189.

⁵¹ Form CO, paragraph 129.

⁵² Form CO, paragraph 186.

small volumes of passive hydraulic actuators or components.⁵³ In that regard the Commission notes that the Notifying Party considers the market for PHA and components to be in decline.⁵⁴ Therefore, the number of contracts limited to smaller volumes is likely to increase over time. Finally, the Notifying Party submits that customers generally extend the contracts for on-going platforms, although the Notifying Party attributes this to suppliers agreeing on requests for cost savings.⁵⁵

- (111) The results of the market investigation suggest that supply contracts usually last 5-10 years. While OEMs may switch suppliers after the end of the contract, the market investigation suggests that they almost never switch suppliers for PHAs modules or components before the end of the agreed contract term. Indeed, none of the respondents has done so in the last five years. This can be explained by the fact that switching suppliers during an on-going contract entails significant risks for the OEM, such as delays and additional quality risks. In addition, the Bidding Data suggests that OEMs only very rarely engage in multi-sourcing strategies. This observation has been confirmed by the market investigation, according to which only a small minority of suppliers has engaged in multi-sourcing of PHA modules and components over the last 10 years.
- (112) In conclusion, in light of the results of the market investigation and of the evidence available to it, the Commission considers that OEMs face significant barriers to switching to a new supplier, in particular during an ongoing contract.

4.2.1.4 Barriers to entry

The Notifying Party's view

- (113) The Notifying Party submits that new players, which are active in the supply of OEM PHA modules and components outside the EEA, may enter the EEA market for OEM PHA modules and components within the next two to three years, because the technical barriers to entry are low. Firstly, the technology is mature and has already been developed by numerous players outside the EEA. Secondly, the production process does not require complex production tooling. Thirdly, there are no major technical innovations which would prevent competitors from outside the EEA to enter the EEA because most innovations involve only incremental improvements that reduce costs or improve quality. The Notifying Party further suggests that OE customers in the EEA may not require suppliers to provide state-of-the-art products such as full-plastic CSCs and sensors because they may be more interested in the price than in the technology. Finally, the Notifying Party submits that patents in this field essentially protect a new design or process and do not prevent competitors from developing alternatives to the details of this design. The Notifying Party noted in particular that TCIC, a Korean supplier, entered the European market for PHAs five years ago as a supplier of Hyundai.⁵⁶

The Commission's assessment

- (114) The Commission considers that barriers to entry to the market for PHA modules and components are likely to be higher than described by the Notifying Party.

⁵³ Form CO, paragraph 188.

⁵⁴ Form CO, paragraph 5.

⁵⁵ Form CO, paragraph 188.

⁵⁶ Form CO, paragraph 362.

- (115) Firstly, with regard to the market entry by TCIC, the Notifying Party itself estimates that TCIC's market share has remained below [0-5]% and is unlikely to increase in the near future. Moreover, there is no other reliable evidence of any other significant entry during the last five years. Neither customers nor competitors are aware of suppliers having entered the EEA market in the last five years.⁵⁷ Moreover, neither customers nor competitors expect entry of new suppliers in the coming five years.⁵⁸
- (116) Secondly, the market investigation suggests that it takes considerable costs and time to set up a plant for the production of PHA modules and components in the EEA. The Commission understands that entry by a supplier who already has been supplying OEM passive hydraulic actuators modules and components for light vehicles outside the EEA could take more than 2 years, while suppliers active only on the IAM would need significantly more time.
- (117) Thirdly, the market investigation suggests that barriers to entry are significant,⁵⁹ in particular given the need for suppliers to demonstrate a track record⁶⁰ and the fact that customers may require quality certifications,⁶¹ as well as a track record of several years, specifically in the supply of PHA modules and components.⁶² This is in line with the fact that market players emphasised that PHAs are a critical product in any vehicle.
- (118) Fourthly, the market investigation suggests that there are significant barriers to entry with regard to innovation, IP and know-how.⁶³ Innovations may relate to Noise Vibration Harshness (NVH), sensor technology, product durability and process and other aspects.
- (119) Fifthly, the Notifying Party itself has noted at several instances that the market for PHAs is a declining market in the EEA.⁶⁴ The Notifying Party estimates that the total market size will decrease by [5-10]% in value and by [5-10]% in volume from 2015 to 2020.⁶⁵
- (120) In light of the results of the market investigation and the evidence available to it, the Commission considers that the barriers to entry into the market for PHA actuator modules and components are significant and that entry is unlikely, in particular when taking into account the limited incentives of a potential entrant to overcome such barriers in order to enter into a declining market. This is in line with the fact that there has been no significant entry in the last 5 years and that neither customers nor competitors expect such entry in the coming 5 years.

⁵⁷ Q1 questionnaire to OEM/OES customers, question 26; Q2 questionnaire to OEM/OES competitors, question 28.

⁵⁸ Q1 questionnaire to OEM/OES customers, question 27; Q2 questionnaire to OEM/OES competitors, question 29.

⁵⁹ Q1 questionnaire to OEM/OES competitors, question 34.

⁶⁰ Q1 questionnaire to OEM/OES competitors, question 34.

⁶¹ Q1 questionnaire to OEM/OES customers, question 28.3.

⁶² Q1 questionnaire to OEM/OES customers, question 28.2.

⁶³ Q2 questionnaire to OEM/OES competitors, question 32 and 33.

⁶⁴ Form CO, paragraph 5, 118, 134 – 135, 308

⁶⁵ Form CO, paragraph 5.

4.2.1.5 Countervailing buyer power

The Notifying Party's view

- (121) The Notifying Party notes that, according to the Horizontal Merger Guidelines, "[e]ven firms with very high market shares may not be in a position, post-merger, to significantly impede effective competition, in particular, by acting to an appreciable extent independently of their customers if the latter possess countervailing buyer power."⁶⁶
- (122) In this regard, the Notifying Party submits that the pricing and quality offer for passive hydraulic actuators will be extremely constrained by OEM's countervailing buyer power post-Transaction.⁶⁷
- (123) Firstly, the Notifying Party argues that the new entity would face a highly concentrated customer base consisting of a small group of large car manufacturers.⁶⁸ In particular, the Notifying Party submits that Valeo is largely dependent on its [...], who represent almost all of its total sales in the EEA. Similarly, FTE is largely dependent on its [...], which account for [70-80]% of its total sales in the EEA. These customers could reallocate some of the new entity's business to LuK, Sachs, Aisin or any of the alternative suppliers.
- (124) Secondly, the Notifying Party argues that that the new entity will be constrained in its pricing and quality offer on passive hydraulic actuators, because customers could leverage the fact that they buy other products from the new entity, which generate far more significant turnover. The Notifying Party submits that passive hydraulic actuators will represent less than [...] % of the new entity's global turnover with each individual customer post-Transaction.
- (125) Thirdly, the Notifying Party argues that car manufacturers exert significant pressure on suppliers through competitive bidding procedures. In particular, the Notifying Party argues that car manufacturers usually launch worldwide bidding processes, which are open to potential competitors from outside the EEA. Moreover, car manufacturers request target prices. Furthermore, car manufacturers may request annual cost savings contractually at the beginning of the contract or quick-savings or new business award productivity savings, when new contracts are awarded. In that regard, the Notifying Party submits that car manufacturers may exert pressure on suppliers by threatening to put them on "new business on hold" ("NBOH") unless they accept to grant the cost savings. The Notifying Party submitted anecdotal evidence of instances where suppliers put the Parties to the Proposed Transaction on NBOH.

The Commission's assessment

- (126) The Commission acknowledges that even firms with very high market shares may not be able to significantly impede competition if the customers possess countervailing buyer power. In that regard, the Horizontal Merger Guidelines make reference to a Commission Decision in the automotive industry, in which the Commission found the existence of significant countervailing buyer power. However, in that case the new entity's combined market share did not surpass [40-50]-[50-60]% and it continued to face competition from

⁶⁶ Paragraph 64 of the Horizontal Merger Guidelines.

⁶⁷ Form CO, paragraph 220.

⁶⁸ Form CO, paragraphs 201-204.

at least four alternative suppliers.⁶⁹ By contrast, in the case at hand, the new entity would have a combined market share of above [70-80]% and would likely face competition from only one other significant supplier.

- (127) Furthermore, the Commission notes that – according to the Horizontal Merger Guidelines – buyer power should be understood as the bargaining strength that the buyer has vis-a-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers.⁷⁰ In this regard, the Commission notes the following with respect to the arguments brought forward by the Notifying Party:
- (128) Firstly, the Commission recognises that the car manufacturers are large sophisticated customers which operate in a relatively concentrated market. However, the supply side is even more concentrated. Currently, more than a dozen car manufacturers with operations in the EEA face only three suppliers of passive hydraulic actuators with significant operations in the EEA. As a result of the Proposed Transaction, the number of significant suppliers of passive hydraulic actuators would be reduced to only two suppliers, namely LuK and the new entity. The new entity would account for more than [70-80]% of the demand, while LuK would account for less than [20-30]% of the demand. The lack of alternative sources of supply is likely to significantly impair the car manufacturers' ability to credibly threaten to resort to alternative sources of supply. Moreover, the market investigation suggests that customers generally would not consider vertically integrating into the upstream market and only a small minority of customers would consider sponsoring the entry of a new supplier. This may be explained by the fact that other car manufacturers would likely also benefit from the entry of a new supplier, which may lessen the incentives of potential sponsors to make the investment associated with sponsored entry.
- (129) Secondly, the Notifying Party implies that car manufactures will be able to leverage the fact that the new entity makes more than [90-100]% of its global turnover with each individual customer with products other than passive hydraulic, which would represent less than [5-10]% of the new entity's global turnover with each individual customer post-Transaction. However, the market investigation suggests that only a small minority of car manufacturers occasionally combine their negotiations for the purchase of passive hydraulic actuators with negotiations for the purchases of other products. The large majority of customers does not align these negotiations. This may be explained by the fact that – according to the market investigation – for the majority of customers, these other products are not purchased at the same time or by the same person within the organisation.
- (130) Thirdly, the Notifying Party argues that car manufacturers exert significant pressure on suppliers through competitive global bidding procedures, in which they may request target prices and annual cost savings which they may attempt to enforce by putting suppliers on NBOH. However, the Commission notes that price reductions are common in the automotive industry without necessarily resulting in countervailing buyer power to the degree asserted by the Notifying Party.⁷¹ Moreover, even if such price reductions would indeed be a sign of buyer power, they do not seem to sufficiently countervail the market power of the suppliers in the current market setting. In particular, the market investigation suggests that NBOH is a very exceptional measure which almost exclusively relates to

⁶⁹ Case No. COMP/M.1882 – *Pirelli / BICC*, paragraphs 73-80.

⁷⁰ Paragraph 64 of the Horizontal Merger Guidelines.

⁷¹ Case No. COMP/M.7174 - *Federal-Mogul Corporation / Honeywell Friction Materials*, paragraph 95.

quality problems. This is in line with the fact that the Notifying Party could name only a few instances, in which suppliers put the Parties on NBOH, [...]. The majority of the examples for NBOH brought forward by the Notifying Party relate [...]. In that regard the Commission considers that it is normal for a supplier to halt its purchases for a product, if the supplier discovers quality problems with regard to this product. The exceptional nature of NBOH was also confirmed by the market investigation, according to which almost none of the respondents to the market investigation put a supplier on NBOH for passive hydraulic actuators or threatened to do so in the last five years. In fact, the market investigation confirms that suppliers are very reluctant to put a supplier on NBOH and only resort to this as a measure of last resort, because it has negative effects on their own purchasing strategy.

- (131) Finally, the Commission notes that – in any case – it is not sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger. In view of the supply structure post-merger, it seems likely that any degree of countervailing buyer power that may exist in the market at the moment will likely be further reduced as a result of the Proposed Transaction.
- (132) In view of the above, the Commission considers it unlikely that car manufacturers will be able to exert enough countervailing buyer power to overcome the increased market power of the new entity post Transaction.

4.2.1.6 Conclusion

- (133) In view of the above, the Commission considers that the Proposed Transaction is likely to give rise to anti-competitive non-coordinated effects and, thus, raises serious doubts as to its compatibility with the internal market for PHAs modules and components for light vehicles in the EEA, in particular in view of (i) the very high market shares for the merging entity in the OEM market for sale of PHA modules and components for light vehicle, (ii) the closeness of competition, (iii) the difficulties for customers to switch to a new supplier, (iv) the unlikelihood of market entry or expansion of other suppliers, and (v) the absence of a high enough level of buyer power capable of countervailing the post-transaction new entity's market power.

4.2.2 IAM passive hydraulic actuator components for light vehicles

- (134) The Notifying Party estimates that the market shares of the Parties and their competitors in the affected markets are the following:

Table 11: IAM market shares per component and per country (based on actual sales in each country in 2016)

Countries	Valeo	FTE	Combined	Luk	Sachs	Others
CMCs						
Croatia	[0-5]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%
Germany	[5-10]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[10-20]%
Greece	[0-5]%	[20-30]%	[20-30]%	[30-40]%	[10-20]%	[30-40]%
CRCs						
Croatia	[0-5]%	[40-50]%	[50-60]%	[30-40]%	[20-30]%	[0-5]%
Cyprus	[0-5]%	[20-30]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%
Germany	[0-5]%	[40-50]%	[40-50]%	[20-30]%	[10-20]%	[10-20]%
Greece	[0-5]%	[30-40]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%
Hungary	[0-5]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%
Italy	[5-10]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[5-10]%
UK	[0-5]%	[20-30]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%
CSCs						
Belgium	[20-30]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%
Bulgaria	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%
Croatia	[40-50]%	[10-20]%	[50-60]%	[10-20]%	[5-10]%	[10-20]%
Greece	[10-20]%	[30-40]%	[50-60]%	[5-10]%	[0-5]%	[40-50]%
Hungary	[30-40]%	[10-20]%	[40-50]%	[30-40]%	[10-20]%	[5-10]%
Ireland	[20-30]%	[0-5]%	[20-30]%	[30-40]%	[20-30]%	[10-20]%
Italy	[30-40]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%
Latvia	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%
Lithuania	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[30-40]%
Poland	[20-30]%	[5-10]%	[30-40]%	[30-40]%	[20-30]%	[10-20]%
Romania	[30-40]%	[0-5]%	[30-40]%	[20-30]%	[10-20]%	[20-30]%
Slovenia	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[10-20]%	[5-10]%
Spain	[20-30]%	[0-5]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%
Sweden	[0-5]%	[30-40]%	[30-40]%	[30-40]%	[10-20]%	[20-30]%
UK	[30-40]%	[30-40]%	[60-70]%	[10-20]%	[10-20]%	[0-5]%

Source: Form CO

- (135) In the IAM, the Transaction thus leads to the following affected market segments:
- the market for CMCs in Croatia, Germany and Greece;
 - the market for CRCs in Croatia, Cyprus, Germany, Greece, Hungary, Italy and the UK;
 - the market for CSCs in Belgium, Bulgaria, Croatia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Romania, Slovenia, Spain, Sweden and the UK.

4.2.2.1 CSCs

The Notifying Party's view

- (136) The Notifying Party submits that the Proposed Transaction will not raise concerns in respect of IAM sales of CSCs as the new entity will continue to face strong competition from numerous suppliers in all national markets. In addition to the Parties, a number of OE suppliers such as LuK, Sachs and Aisin are active in the IAM. While their market shares vary across countries, the Notifying Party estimates that LuK and Sachs account for [30-40]% and [20-30]%, respectively, of overall passive hydraulic actuator component sales in the EEA.⁷² Like the Parties, these competitors supply both OE parts that they sell on the OEM market and adaptable parts, i.e. components that do not meet the same quality and durability standards as the OE parts but are qualified to be used as spares in the aftermarket.⁷³
- (137) While the Notifying Party is unable to provide estimate market shares of players other than LuK and Sachs or to even identify the competitors active in each country, it submits that the new entity will also face competition from several European IAM-only suppliers (which manufacture and supply spare parts specifically for the aftermarket, without being active in the OEM market), like Metelli, LPR Brakes, Nuova Tecnodelta and Donaflex, as well as low-cost Asian suppliers that export their products in the EEA.⁷⁴
- (138) In addition, the Notifying Party submits that the new entity would face strong competitive pressure from competitors on the segment for CSCs sold in kits (DMF kits or three-piece kits), where the Parties have a small combined market share (highest in the United Kingdom at [10-20]%).⁷⁵
- (139) The Notifying Party further points out that several low-cost Asian suppliers have entered or expanded their activities on the IAM in recent years and entry and expansion can easily take place in the future, as there are no significant barriers to entry on this market, which is based on a mature technology.⁷⁶
- (140) Finally, the Notifying Party submits that whilst the IAM customer base is more dispersed than on the OEM market, sales to the limited number of international buying groups account for [...] % and [...] % of FTE's and Valeo's sales, respectively.⁷⁷ Furthermore, customers can freely switch suppliers and they can also make arbitrage and source their products from low-cost countries as the level of transport costs is limited.⁷⁸ As described

⁷² Annex 7.3.1.h.2.

⁷³ Form CO, paragraph 297

⁷⁴ Form CO, paragraphs 237, 238.

⁷⁵ Form CO, paragraph 245.

⁷⁶ Form CO, paragraphs 363, 393.

⁷⁷ Form CO, paragraph 323.

⁷⁸ Form CO, paragraph 320.

above, the Notifying Party submits that significant volumes are subject to re-exportation by customers.⁷⁹ For these reasons, the Notifying Party submits that IAM customers yield buyer power which they could use to curtail any attempt on its side to raise prices post-Transaction.

The Commission's assessment

- (141) Post-Transaction, the new entity would be the largest player on the market, with a market share above [30-40]% in several EEA countries.
- (142) In the United Kingdom the Proposed Transaction would combine the two largest players on the market leading to a market share of [60-70]% for the new entity, with an overlap of [30-40]%.⁸⁰ Its two main competitors, LuK and Sachs, have market shares of [10-20]% and [10-20]%, respectively while other, smaller players account for only [0-5]% of sales.
- (143) In Croatia, the new entity would have a market share of [50-60]%, with an overlap of [10-20]% of the market. LuK and Sachs have [10-20]% and [5-10]% of the market, respectively. Smaller IAM players are estimated to have a combined market share of [10-20]%, although the Parties have not been able to identify them and their market shares.
- (144) In Greece, the Parties have a combined market share of [50-60]% with an overlap of [10-20]%. The remainder of the market is highly fragmented, with LuK and Sachs accounting for [5-10]% of the market each, and other players for the other [40-50]% of the market.
- (145) In Hungary, the new entity would also be the market leader with a [40-50]% share of the market. Its main competitors have market shares of [30-40]% (LuK) and [10-20]% (Sachs).
- (146) In Latvia, the new entity would have a market share of [40-50]%, with an overlap of [20-30]% of the market. LuK and Sachs account for [10-20]% of the market each, with smaller IAM-only competitors accounting for the remaining [30-40]% of sales.
- (147) In Slovenia, the new entity would have [30-40]% of the market, comparable to that of LuK, and the Parties have an overlap of [10-20]%. Sachs accounts for [10-20]% of sales, and IAM-only players for the other [5-10]%
- (148) In Italy and Romania, the combined market share of the Parties is again of [30-40]%, with a relatively limited overlap of [0-5]%
- (149) The figures in Table 11 above are based on the Parties' actual sales in each country. The Parties state that they have information that some of their large customers which are active in multiple countries purchase components in one country and then re-export them to another country where the sourcing conditions are less favourable. The Notifying Party has thus submitted alternative estimates of market size and shares, in which the volumes re-exported by customers were allocated to the country of destination. The market shares with export re-allocation are presented below:

⁷⁹ The Parties submit that [20-30]% of the Parties' sales in the United Kingdom are re-exported to France and Germany, [30-40]% of sales in Croatia are re-exported to Bosnia, Serbia and Albania, [20-30]% of FTE's sales in Greece are re-exported in Albania and Macedonia, [20-30]% of FTE's sales in Latvia and Lithuania are re-exported in Russia. Form CO, paragraph 248.

⁸⁰ [50-60]% without export reallocation, with an overlap of [20-30]%

Table 12: IAM CSC market shares in 2016 (after export re-allocation)						
Countries	Valeo	FTE	Combined	LuK	Sachs	Others
Belgium	[20-30]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%
Bulgaria	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%
Croatia	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[5-10]%	[30-40]%
Greece	[10-20]%	[30-40]%	[40-50]%	[0-5]%	[0-5]%	[40-50]%
Hungary	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%
Ireland	[20-30]%	[0-5]%	[20-30]%	[30-40]%	[20-30]%	[10-20]%
Italy	[30-40]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%
Latvia	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%
Lithuania	[5-10]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[30-40]%
Poland	[20-30]%	[5-10]%	[30-40]%	[30-40]%	[20-30]%	[10-20]%
Romania	[30-40]%	[0-5]%	[30-40]%	[20-30]%	[10-20]%	[20-30]%
Slovenia	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[10-20]%	[5-10]%
Spain	[20-30]%	[0-5]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%
Sweden	[0-5]%	[30-40]%	[30-40]%	[30-40]%	[10-20]%	[20-30]%
UK	[20-30]%	[20-30]%	[50-60]%	[20-30]%	[10-20]%	[10-20]%

Source: Form CO

- (150) The Commission considers that including in the calculation of market size and shares for a given country the sales made in a different territory is speculative and would result in a highly unreliable proxy for (the absence of) market power. While the Parties may have a certain degree of transparency over their own customers' re-exportation practices, in the absence of third party reports and data on the IAM and re-exports, the basis for re-allocating sales destined for countries other than the ones in which they are made appears to be unreliable.
- (151) In any case, even after re-allocating the re-exported volumes, the new entity would still have a high market share and a leading position on the CSC market in Croatia, Greece, Hungary, Italy, Latvia, Romania, Slovenia and the United Kingdom.

Croatia, Greece, Hungary, Latvia, Slovenia and the United Kingdom

- (152) The market investigation has revealed that Valeo and FTE are close competitors on the IAM and that the main constraint is imposed by the other OE suppliers, i.e. Sachs and LuK. As described in section 3.13, the parts supplied on the independent aftermarket are either OE parts developed for the OEM channel or adaptable parts. Adaptable parts are manufactured and supplied both by OE suppliers (e.g. Valeo or FTE develop and sell adaptable parts for those product references/vehicles for which they are not OEM supplier) and by IAM-specific suppliers (who sell only adaptable parts). According to the Parties, OE parts sold on the IAM are not marked as such and cannot necessarily be distinguished

from adaptable parts.⁸¹ Only adaptable parts sold by IAM-specific suppliers can be recognised as such by virtue of the fact that the suppliers are not active on the OEM market.

- (153) Both the Notifying Party and IAM customers state that there is a perceived difference in quality between parts supplied by OE suppliers, be they OE parts or adaptable ones, and parts supplied by low-cost IAM-only suppliers. For instance, the Notifying Party states that "*Valeo considers that adaptable products supplied by LuK and Sachs will meet comparable quality and durability standards as OE parts.*"⁸² This view is consistent with that of several IAM customers, who indicated that spare parts manufactured by non-OE suppliers are expected to be of a lower quality.⁸³ The customers furthermore explained that quality is a very important criterion in their purchasing decision and they have a preference for OE suppliers. When asked whether adaptable parts produced by IAM-specific suppliers are suitable for replacing OE components, over 40% of respondents indicated that they are suitable only sometimes (between 25% and 50% of contracts) or rarely (less than 25% of contracts).⁸⁴
- (154) Quality and track record as OEM supplier are thus important elements of competitive differentiation in the IAM, which suggests that OE suppliers compete most closely against each other, while IAM-only suppliers, in particular low-cost Asian suppliers are perceived as providing lower-quality products.
- (155) Closeness of competition between OE suppliers in the IAM is also confirmed by the fact that they are selected as "preferred suppliers" by international buying groups. Buying groups, of which a significant share of the Parties' customers are members,⁸⁵ select a number of "preferred", "listed" or "associated" suppliers on the basis of their quality, brand reputation, delivery conditions or prices, and encourage their members to source from these suppliers, sometimes even monitoring compliance with these recommendations.⁸⁶ The only suppliers holding this status with international buying groups ATR, Temot, Nexus, Groupauto, and AD are the Parties, LuK and Sachs.⁸⁷
- (156) For these reasons, the Commission considers that the smaller IAM-only suppliers do not impose a strong competitive constraint on the Parties and that, post-Transaction, the new entity would primarily face competition from LuK and Sachs, which together hold a lower share of the CSCs market in Croatia, Greece, Hungary, Latvia, Romania and the United Kingdom than Valeo and FTE combined.
- (157) As regards the Notifying Party's argument that on CSCs sold individually the Parties face competition from CSCs sold in kits, the Commission first notes that there is still significant demand for CSCs sold alone. Even in high-labour cost countries such as Italy, the UK or Sweden, the number of CSCs sold stand-alone is higher than or similar to that of CSCs

81 Response to RFI of 17 October 2016: "there are no marking in catalogues or on the products allowing them to differentiate an OE from an adaptable part."

82 Response to RFI of 17 October 2016.

83 Q4 questionnaire to IAM customers, question 7.3.1.

84 Q4 questionnaire to IAM customers, question 7.3.

85 [...] % of Valeo's IAM sales, and [...] % of FTE's sales, are to wholesalers that are members of an international buying group. Form CO, paragraph 323.

86 Response to RFI of 21 October 2016.

87 Response to RFI of 21 October 2016.

sold in kits.⁸⁸ Furthermore, the Commission is of the view that the Parties' limited share on the market for CSCs sold in kits does not represent evidence of high competitive pressure on the market for CSCs sold stand-alone. As explained by the Parties, kits suppliers typically source CSCs on the trading market in order to integrate them into kits. Indeed, Valeo's main competitors on the kits market, [...]: the latter sold [...] of CSCs to [...] and [...] of CSCs to [...] in 2015. FTE's market share on the trading market for CSCs is estimated at around [60-70]%.⁸⁹ Thus, the extent to which CSCs sold in kits would constrain the Parties with respect to CSCs sold stand-alone depends on kits suppliers' access to CSCs for integration into kits, either through their own production or by sourcing them on the trading market.

- (158) The market investigation revealed that customers are not aware of any recent entrants on the IAM market for passive hydraulic actuator components; neither do they expect any entry in the coming 5 years.⁹⁰
- (159) While some customers indicated that technical barriers to entry are not high, the majority considered that having manufacturing facilities in the EEA would be necessary for a new entrant to be considered a viable supplier on the IAM.⁹¹ A majority of customers also considered that a track record of several years in the supply of these components outside the EEA is needed.⁹²
- (160) As acknowledged by the Notifying Party, OE-quality and brand recognition are the main purchasing criteria for customers in the IAM, and are more important in this respect than price.⁹³ As described above in paragraphs (152) - (155), OE suppliers enjoy a reputational advantage with customers stemming from their perceived superior quality and they are promoted as "preferred" suppliers by international buying groups. For these reasons, existing IAM-only suppliers represent a limited competitive constraint for the Parties and other OE suppliers, and entry or expansion by Asian suppliers is unlikely to take place on a sufficiently large scale, within a sufficiently short timeframe so as to constrain the Parties' market power in certain national markets.
- (161) The Commission considers that the customer base on the IAM market, consisting of IAM wholesalers and retail distribution chains, is highly fragmented. While the Notifying Party points out that a high share of the Parties' sales are to international buying groups, it also clarifies that these are not actually in charge of purchasing spare parts on behalf of their members. Rather, buying groups review suppliers and draw up recommendation to their members to purchase from certain "preferred suppliers". Whilst buying groups may negotiate certain commercial conditions such as rebates with these suppliers, the supply contracts are negotiated and concluded by each wholesaler individually.⁹⁴
- (162) As regards imports by customers, while in the market investigation some customers indicated that they source passive hydraulic actuator components from other countries within the EEA, this practice does not appear to be widespread enough as to result in

⁸⁸ Form CO, Annexes 7.3.1.h.1 and 7.3.1.i.1.

⁸⁹ Form CO, paragraph 269.

⁹⁰ Q4 questionnaire to IAM customers, questions 27 and 28. Only one customer indicated it expects the entry of suppliers from South Korea and Japan.

⁹¹ Q4 questionnaire to IAM customers, question 30.1.

⁹² Q4 questionnaire to IAM customers, question 30.2.

⁹³ Form CO, paragraph 315.

⁹⁴ Reply to request for information of 25 October 2016.

significant competitive pressure. As acknowledged by the Parties, price negotiations take place "at local level, taking into account market conditions that may exist locally"⁹⁵ and indeed prices differ significantly between countries.⁹⁶

- (163) In this context, the Commission considers that IAM customers do not hold a sufficiently high level of buyer power that would countervail the new entity's ability to exercise its market power post-Transaction.
- (164) In conclusion, the Proposed Transaction would bring together two of the main competitors on the IAM market for CSCs. In Croatia, Greece, Hungary, Latvia, Slovenia and the United Kingdom, the merger would eliminate a close and significant competitor and turn the new entity into the market leader, with (except in Slovenia) a market share exceeding that of the two other OE-suppliers combined. In light of this and of the limited constraint represented by IAM-only players, of the low likelihood of entry and expansion of other suppliers, and in the absence of a high enough level of buyer power capable of countervailing the post-transaction new entity's market power, the Commission takes the view that the Proposed Transaction raises serious doubts as to its compatibility with the internal market as regards the IAM market for CSCs in Croatia, Greece, Hungary, Latvia, Slovenia and the United Kingdom as a result of non-coordinated horizontal effects.

Belgium, Bulgaria, Ireland, Italy, Lithuania, Poland, Romania, Spain, and Sweden

- (165) Although a similar market structure and conditions would characterise the national markets of Italy and Romania post-Transaction, in these two countries FTE is currently a small competitor and thus constitutes a more limited constraint on Valeo. In light of this, the Commission considers that the Proposed Transaction is less likely to result in significant non-coordinated effects and as such, it does not raise serious doubts with respect to the IAM market for CSCs in these two countries. The Commission notes that any potential anticompetitive effects on the Italian and Romanian markets that could occur as a result of the merger would in any event be eliminated given the Notifying Party's Commitments to divest its entire passive hydraulic actuators business.
- (166) In the other affected countries, the increment in market share that would be brought about by the Proposed Transaction would be more limited and/or the new entity would face competition from players with a stronger position. In Bulgaria and Poland, the Proposed Transaction entails an increment of [10-20]% and [5-10]%, leading to a combined market share of [30-40]% and [30-40]%, respectively. The new entity would find itself behind LuK (which has a market share of [30-40]% in Bulgaria and [30-40]% in Poland). Sachs would be a significant competitor with [10-20]% and [20-30]% respectively, while smaller IAM-only suppliers account for [10-20]% of sales on each market. In Belgium, the new entity (with a market share of [30-40]%) would also find itself behind LuK ([30-40]%) and the overlap between the Parties is limited to [0-5]%. The increment that would be brought about by the Transaction would also be small ([0-5]% or less) in Ireland, Spain and Sweden, where the new entity would have a share of [20-30]%, [20-30]% and [30-40]%, respectively. In Lithuania, the merger would result in a combined market share of [20-30]%.

⁹⁵ Reply to request for information of 25 October 2016.

⁹⁶ Response to RFI of 26 October 2016.

- (167) In light of the results of the market investigation and particularly in view of the small or moderate overlap between the Parties and the constraint represented by their main competitors, the Commission considers that the merger is not likely to result in a significant increase in market power and non-coordinated effects in the IAM markets for CSC in Belgium, Bulgaria, Ireland, Lithuania, Poland, Spain, and Sweden.

4.2.2.2 CMCs

- (168) In the markets for CMCs in Croatia, Germany and Greece, the Proposed Transaction would lead to a combined market share of less than [30-40]% and a minimal or moderate increment (below [0-5]% in Croatia and Greece, [5-10]% in Germany). LuK is the Parties' main competitor, with a market share of [30-40]% or more, followed by Sachs.
- (169) In light of the limited overlap between the Parties and the constraint represented by their main competitors, the Commission considers that the merger is not likely to result in a significant increase in market power and non-coordinated effects in the IAM markets for CMCs in Croatia, Germany and Greece.

4.2.2.3 CRCs

- (170) With the exception of Italy, in all affected national markets for CRCs, the Proposed Transaction entails a minimal increment of between [0-5]% and [0-5]%. In Italy, the overlap between the Parties is of [5-10]%, leading to a combined market share of [30-40]%. The new entity would continue to face competition from LuK ([30-40]%) and Sachs ([20-30]%), as well as smaller players ([5-10]%).
- (171) In light of the limited overlap between the Parties and the constraint represented by their main competitors, the Commission considers that the merger is not likely to result in a significant increase in market power and non-coordinated effects in the IAM markets for CRCs in Croatia, Cyprus, Germany, Greece, Hungary, Italy and the UK.

4.3 Non-horizontal effects

- (172) According to the Non-Horizontal Merger Guidelines,⁹⁷ non-coordinated effects may significantly impede effective competition as a result of a vertical merger if such merger gives rise to foreclosure.
- (173) As described in section 3.1.4, an IAM trading market for passive hydraulic actuator components, distinct from the IAM supply of spare parts to wholesale distributors, can be plausibly defined. Under such a definition, the Proposed Transaction gives rise to a vertical relationship between the upstream EEA-wide IAM trading market and the downstream national IAM markets for DMF kits.
- (174) On the trading market all IAM manufacturers trade components in order to be able to complete their portfolio by purchasing products of their competitors and then reselling them under their own brand name. Also, suppliers of DMF kits purchase some of the components (such as FTE's CSC) on this market and then incorporate them in the kits they sell under their brand name.
- (175) The Notifying Party claims that, even if the entity will theoretically have the ability to engage input foreclosure, it would not have the incentive to do so as: [...].⁹⁸ Finally, the

⁹⁷ 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.

Notifying Party claims that even if the new entity was to engage in such behaviour, this would not have an impact on effective competition as [...] could resort to alternative IAM suppliers.

- (176) For the reasons expressed below, the Commission takes the view that the new entity, albeit potentially having the ability to foreclose downstream competitors, would not have the incentive to do so.

4.3.1 Ability to foreclose

- (177) On the EEA IAM trading market, as explained above, the new entity would have a significant market share estimated to circa [50-60]% to [60-70]%. On that market, the new entity would face competition mainly from LuK and Sachs with an estimated share of [20-30%]-[30-40]% and [5-10%]-[10-20]% respectively.⁹⁹
- (178) In light of the significant market share on the upstream market, which likely grants market power, the new entity may have the ability to foreclose its downstream competitors of DMF kits access to the CSCs which are needed to complete the kits. However, the significant market share of the new entity on the upstream market may overstate its ability to foreclose downstream competitors from access to CSCs for the following reasons.
- (179) First, there are other suppliers of CSCs to which downstream competitors could resort.¹⁰⁰In this respect the Notifying Party claims that as a general rule kits manufacturers prefer to include OE CSCs, however in the event the new entity was to stop supplying its downstream competitors they could resort to IAM only manufacturers and purchase adaptable CSCs. Indeed, downstream competitors responding to the market investigation indicated that adaptable CSCs are close substitutes to OE CSCs (manufactured inter alia by FTE). As explained above, IAM customers have a preference for procuring spare parts from OE-suppliers due to a perceived quality difference relative to components manufactured by IAM-only suppliers, however the same does not apply to suppliers themselves (which often source adaptable parts which they then re-sell on the IAM under their own brand).
- (180) Second, not all DMF kits include a CSC. Depending on the specific customer preferences, suppliers of DMF kits offer to the market different solutions including different components. More specifically, the following options are generally offered by IAM suppliers:
- (a) DMF kits including a DMF, a drive plate and a cover assembly;
 - (b) DMF kits including a DMF, a drive plate, a cover assembly, and a CRC with release bearings; and,
 - (c) DMF kits including a DMF, a drive plate, a cover assembly, and a CSC.¹⁰¹
- (181) In light of the above, if the new entity were to engage in a foreclosure strategy it would only impact a part – and not all – of the competitors' downstream business therefore effectively limiting its ability to foreclose.

⁹⁸ The supply agreement between [...] is valid until [...].

⁹⁹ Form CO, paras. 267-268.

¹⁰⁰ Q3 questionnaire to IAM customers, questions 27 and 28.

¹⁰¹ Form CO, para. 81.

- (182) In any event, it is not necessary for the Commission to conclude on whether the new entity will have the ability to foreclose its downstream competitor's access to CSCs, as in any event it will not have the incentive to do so.

4.3.2 *Incentive to foreclose*

- (183) The Notifying Party claims that the new entity would not have the incentive to engage in input foreclosure because sales to its competitors represent a major proportion of the overall sales of CSCs.
- (184) According to the information provided in the course of the investigation, sales of CSCs to [...] represent a substantial part of FTE's total turnover achieved on the trading market. Particularly in the EEA IAM sales of CSC to [...] represented [40-50]% of the total volume traded and sales to [...] [20-30]%.
- (185) If the analysis is broadened further to include all of FTE's sales on the trading market, amounting to EUR [...] million, sales of CSCs to [...] and [...] still represent a significant proportion: EUR [...] million.
- (186) Sales of CSC to [...] are also rather profitable. In terms of profitability, FTE achieved a [...] EBIT margin through trading sales, whereas the EBIT margin achieved through direct sales to IAM distributors amounted to [...] (according to FTE's best estimates). The higher profitability of trading sales can be explained by the lower costs of supplying [...] rather than IAM distributors (in particular, more limited costs than required for developing a sales and distribution network, attracting multiple IAM customers, and delivering the products throughout the EEA).
- (187) If the new entity was to foreclose its main downstream competitors' access to its CSCs it would not be able to recoup the lost revenues by increased sales of DMF kits in the downstream market. In order to profit from a foreclosure strategy, the new entity would need to be able to fully recoup its upstream losses by increased sales on the downstream market. The Commission takes the view that this is unlikely because, first, Valeo is currently a marginal player on the downstream market(s) and, second, because its product offering is less competitive than that of LuK.
- (188) If the downstream market for kits was to be segmented in DMF kits and three piece kits, Valeo's has a market share estimated below [0-5]% on DMF kits in all national IAM markets and has a market share below [20-30]% on three-piece kits on all national IAM markets with the exception of the UK ([20-30]%) and Belgium ([20-30]%). FTE does not supply three-piece and DMF kits.
- (189) On the various IAM national markets for DMF kits, LuK and Sachs have sales significantly larger than those of the Valeo. Particularly, LuK's market share is estimated at more than [40-50]% in all Member States, and in a number of them the estimated market share is at more than [60-70]%. Likewise, Sachs has a significant market share in all Member States, estimated between [20-30]% and [50-60]%. On the plausible market for three-piece kits where Valeo has a stronger presence, LuK will remain the largest market player and Sachs the second largest player except for the UK. In the UK, Valeo has a market share of [20-30]%, LuK of [40-50]% and Sachs of [10-20]%.
- (190) If only the sales of CSCs in kits are taken into account, Valeo's market share is estimated to be below [10-20]% in all member states except the UK, where it has an estimated market share of [10-20]%. Just as for the plausible markets for DMF kits, LuK has the largest proportion of sales (estimated between [40-50]% and [60-70]%, depending on the Member State) and Sachs the second largest proportion of sales (estimated between [10-20]% (UK) and [40-50]%, depending on the Member State). In the EEA Valeo had sales of kits of a

value of EUR [...] including a CSC whereas LuK sold kits for almost EUR [...] and Sachs for roughly EUR [...].

- (191) For the new entity to profit from foreclosing [...] from FTE's CSCs, it would need to attract a significant proportion of those sales. The Commission believes that this is unlikely for the following reasons.
- (192) First, [...] could resort to alternative sources of supplies – such as IAM only suppliers providing adaptable CSCs – or alternatively turn to in house production of adaptable CSCs. As mentioned above, the market investigation indicated that adaptable CSCs are substitutes to OE CSCs and therefore can be used in place of those of FTE.
- (193) Therefore if the new entity was to stop supplying downstream competitors it would not impede them from effectively competing and it would be unlikely for it to recoup the sales foregone upstream.
- (194) Second, the bulk of Valeo's sales are of kits incorporating a rigid flywheel rather than a DMF. The rigid flywheel is Valeo's alternative solution to DMFs, developed by LuK and still patent protected. According to the Notifying Party, rigid flywheels serve the same purposes of DMF but customers prefer to purchase OE DMF rather than adaptable DMF or rigid flywheels.
- (195) In light of the above, even if the new entity was to stop supplying altogether CSCs to [...] – who also offers DMF kits – customers would nonetheless prefer to purchase a DMF kit with an adaptable CSC rather than a four piece kit with an OE CSC.
- (196) The Commission therefore concludes that, if it was to foreclose access to its CSCs, the new entity would not be able to recoup the sales foregone upstream with additional sales of kits. Therefore, irrespective of whether the new entity will have the ability to engage in input foreclosure, it would not have the incentive to do so.
- (197) This conclusion is also supported by the fact that [...].
- (198) In light of the foregoing, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical relationship between the upstream EEA-wide IAM trading market and the downstream national IAM markets for DMF kits.

4.4 Conclusion on competitive assessment

- (199) For the reasons set out in paragraphs (86) to (164) above, and in the light of the market investigation and of the evidence available to it, the Commission takes the view that the Proposed Transaction raises serious doubts as to its compatibility with the internal market through non-coordinated effects in respect of (i) the sale of PHA modules and components for light vehicles on the OEM market in the EEA, and (ii) the sale of CSCs for light vehicles in the IAM market in Croatia, Greece, Hungary, Latvia, Slovenia and the United Kingdom.
- (200) For the reasons set out in paragraphs (165) to (171) above, and in the light of the market investigation and of the evidence available to it, the Commission takes the view that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market through non-coordinated effects in respect of (i) the sale of CSCs for light vehicles on the IAM in Belgium, Bulgaria, Ireland, Italy, Lithuania, Poland, Romania, Spain, and Sweden (ii) the sale of CMCs for light vehicles on the IAM market in Croatia, Germany and Greece, and (iii) the sale of CRCs for light vehicles on the IAM market in Croatia, Cyprus, Germany, Greece, Hungary, Italy and the UK.

- (201) For the reasons set out in paragraphs (177) to (198) above, and in the light of the market investigation and of the evidence available to it, the Commission takes the view that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market through though non-horizontal effects in respect of the EEA trading market for passive hydraulic actuator components and the IAM national markets for DMF kits.

5 COMMITMENTS

5.1 Description of the Proposed Commitments

- (202) In order to render the Proposed Transaction compatible with the internal market, the Notifying Party modified it by entering into the following commitments (the "Commitments" or "Proposed Commitments").
- (203) Pursuant to the Commitments, the Notifying Party undertakes to divest all its business activities in the field of passive hydraulic actuators worldwide, with the exception of its Korean activities, to Raicam Industrie S.r.l. ("Raicam" or "the Purchaser"). Specifically, the Notifying Party commits to divest:
- (i) Its activities for the development, production and supply of passive hydraulic actuators in Mondovì, Italy ("Mondovi" or the "Mondovi Divestment Business"). This will be carried out through the operational carving out of the passive hydraulic actuator business from Valeo's Mondovi plant. Valeo undertakes to supervise and bear the costs of the relocation of the assets and to cooperate with the purchaser to ensure that the relocation of the production assets will not have a meaningful negative impact on the operation of the Mondovi Divestment Business.
 - (ii) Its entire manufacturing plant in Gemlik, Turkey ("Gemlik" or the "Gemlik Divestment Business");
 - (iii) Its activities for the production and supply of passive hydraulic actuators in China ("China" or the "Chinese Divestment Business"), to be carried out through an operational carving out from Valeo's Nanjing plant;
 - (iv) Its assets for the production and supply of passive hydraulic actuators in India ("India" or the "Indian Divestment Business");
- (together, the "Divestment Business").
- (204) The Divestment Business includes (i) all tangible and intangible assets, including all intellectual property rights, necessary for the operation of the Divestment Business, (ii) all licenses, permits and authorisations issued for the benefit of the Divestment Business, (iii) all supply agreements with OEMs related to passive hydraulic actuators, and (iv) all relevant personnel necessary for operation.
- (205) The Commitments include a transitional agreement for the supply of sensors and plastic parts to the Divestment Business for a period of up to two years, as well as a global transitional service agreement for a period of up to [...] for the provision of infrastructure and hosting services, including IT services, for the Mondovi, Gemlik and Chinese Divestment Businesses. The Notifying Party also undertakes to purchase from Raicam passive hydraulic actuator components on the aftermarket for a period of [...].

- (206) In addition, the Notifying Party enters into related commitments regarding the separation of the Divestment Business from the retained business and the preservation of its viability, marketability and competitiveness, including the appointment of a monitoring trustee.
- (207) The Notifying Party has entered into a legally binding agreement with the Purchaser setting out the terms of the purchase. The divestment therefore represents a fix-it-first solution¹⁰² which enables the Commission to assess with a requisite degree of certainty whether the transfer of the Divestment Business to the identified purchaser removes the competition concerns raised by the Transaction.

5.2 The Commission's assessment of the Commitments

5.2.1 Framework for the Commission's assessment of the Proposed Commitments

- (208) Where a concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the operation so as to remove the grounds for the serious doubts identified by the Commission with a view to restoring effective competition following serious doubts identified by the Commission..
- (209) As set out in the Commission Notice on remedies acceptable under the Merger Regulation (the "Remedies Notice")¹⁰³ in order to be accepted by the Commission the commitments have to entirely eliminate the competition concerns raised by the concentration,¹⁰⁴ and have to be comprehensive and effective from all points of view.¹⁰⁵ The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market in that they will prevent the significant impediment to effective competition in all relevant markets where competition concerns were identified.¹⁰⁶
- (210) In assessing whether commitments will be appropriate to preserve effective competition post-Transaction, the Commission is to consider all the relevant factors including, *inter alia*, the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the Parties and other participants on the market.¹⁰⁷
- (211) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.¹⁰⁸
- (212) Divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps, although other structural commitments, such as access remedies, may be suitable to resolve concerns if those remedies are equivalent to divestitures in their effects.¹⁰⁹

¹⁰² Remedies Notice, paras. 56 and 57.

¹⁰³ Remedies Notice p. 1-27.

¹⁰⁴ See also Case C-202/06 P *Cementbouw Handel & Industrie v Commission* [2007] ECR 2007 I-12129, Paragraph 54.

¹⁰⁵ Remedies Notice, para. 9 and 61.

¹⁰⁶ Remedies Notice, para. 9

¹⁰⁷ Remedies Notice, para. 12.

¹⁰⁸ Remedies Notice, para. 9.

¹⁰⁹ Remedies Notice, para. 19.

- (213) The Commission may also consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be "carved out" in those respects.¹¹⁰ . However, in any case, the Commission will only be able to accept commitments which require the carve-out of a business if it can be certain that, at least at the time when the business is transferred to the purchaser, a viable business on a stand-alone basis will be divested and the risk for the viability and competitiveness caused by the carve-out is reduced to a minimum.¹¹¹
- (214) The intended effect of a divestiture will only be achieved if and once the business to divest is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. In order to ensure that the business is divested to a suitable purchaser, the commitments have to include criteria to define its suitability which will allow the Commission to conclude that the divestiture of the business to such a purchaser will likely remove the competition concerns identified.¹¹²
- (215) However, there are situations where the Commission does not need to provide for the criteria for the parties to identify a suitable purchaser since the parties have already entered into a legally binding agreement with a buyer outlining the essentials of the purchase during the Commission's procedure (so called "fix-it-first remedy"). In this situation, the Commission will be able to decide whether the transfer of the divested business to the identified purchaser will remove the competition concerns. In this case, and if the Commission authorises the notified concentration, no additional Commission decision for the purchaser approval will be needed and the closing of the sale of the divested business may take place shortly afterwards.¹¹³
- (216) If the parties choose to enter into a binding agreement with a suitable purchaser during the procedure by way of a fix-it-first solution, the Commission will be able, in those circumstances, to conclude with the requisite degree of certainty that the commitments will be implemented with a sale to a suitable purchaser.¹¹⁴

5.2.2 *Assessment of the Proposed Commitments*

5.2.2.1 Suitability to remove serious doubts

- (217) Valeo serves its customers in the EEA from its manufacturing plants in Mondovi and Gemlik.¹¹⁵ The divestment of Mondovi and Gemlik, including all supply agreements with OEMs, will thus eliminate the entire overlap between the Parties in the OEM/OES market for passive hydraulic actuators in the EEA. The inclusion of Valeo's passive hydraulic actuators activity China and India will allow the Purchaser to have a wider geographical footprint and to bid for global platforms.
- (218) The Notifying Party also undertakes not to compete, for a period of [...] after the transfer of the Divestment Business, for the current business or the awarded business, i.e. for the supply to OEM customers of products of the Divestment Business for which the start of production has occurred prior to the transfer, as well as for the contracts awarded to Valeo

¹¹⁰ Remedies Notice, para 35.

¹¹¹ Remedies Notice, para. 36.

¹¹² Remedies Notice, para. 43.

¹¹³ Remedies Notice para.56.

¹¹⁴ Remedies Notice para.57.

¹¹⁵ [Information on Gemlik's revenue]. Form RM, para. 27.

prior to the transfer but for which the start of production has not yet occurred. This clause will prevent a situation whereby OEMs activate the change of control clause in existing contracts¹¹⁶ in order to keep Valeo as a supplier and the business is thus not effectively transferred.

- (219) Therefore, and based on the projected sales for the period 2018 – 2020 (see Table 2 above), the Purchaser would have a market share of [10-20]% - [10-20]% of the OEM/OES market for passive hydraulic actuators in the EEA over the next five years.¹¹⁷
- (220) The divestment of Mondovi and Gemlik also removes the overlap between the Parties on the IAM. Post-Divestment, Valeo will not be able to manufacture passive hydraulic actuator components for the car models equipped by the Mondovi and Gemlik plants on the OEM/OES market (the patents related to passive hydraulic actuators will be transferred to the Divestment Business). Valeo would therefore no longer be able to supply OE parts on the IAM for the car models in question.¹¹⁸ As noted in section 4.2.2.1, the IAM market shares reflect a supplier's position on the OEM/OES market (with a time lag), thus the divestment of the ongoing and the booked OEM/OES business is expected to result in the creation of a significant competitor to existing IAM suppliers of passive hydraulic actuator components.
- (221) The results of the market test of the Proposed Commitments were positive as to their suitability to remove the serious doubts identified by the Commission in respect of the OEM/OES and the IAM markets for passive hydraulic actuators.
- (222) The majority of respondents to the Commission's market test indicated that they consider that the Commitments would remove the competition concerns in respect of passive hydraulic actuators supplied to OEM customers as they would ensure that the number of main suppliers on the market remains the same. Whilst a small proportion of market test participants refrained from taking a position on this aspect, no respondent considered that the Commitments are not suited to address the competition concerns identified.¹¹⁹
- (223) The results of the market test were likewise positive in respect of the IAM segment, with all respondents that expressed a view on the suitability of the Commitments indicating that they are capable of removing the competition concerns on the national markets for CSCs.¹²⁰
- (224) Based on the results of the market test and the reasons set out above, the Commission considers that the Commitments are suitable to remove any serious doubts raised by the Proposed Transaction in respect of the EEA OEM/OES market for passive hydraulic actuators as well as the national IAM markets for passive hydraulic actuator components.

¹¹⁶ The terms and conditions of contracts with [...].

¹¹⁷ Form CO, Annex 7.3.1.c.

¹¹⁸ To continue offering the respective references on the IAM, Valeo would have to either purchase the OE parts from Raicam or to develop (or purchase) adaptable components for the car models in question.

¹¹⁹ Q6 Market test remedies – OEM customers, responses to question 1. Q7 Market test remedies – Competitors, responses to question 1.1.

¹²⁰ Q5 Market test remedies – IAM customers, responses to question 1. Q7 Market test remedies – Competitors, responses to questions 1.2 – 1.8.

5.2.2.2 Viability of the Divestment Business

- (225) The Divestment Business consists of Valeo's entire operations in the passive hydraulic actuator area, with the exception of its limited activity in Korea.¹²¹ The EEA business (Mondovi and Gemlik) had sales of EUR [...] million and an EBITDA of [...] % in 2016. Its revenues are forecasted to [...] over the next two years ([...]) but to grow thereafter and to reach an EBITDA profitability of [...] % in 2021. The Divestment Business was recently awarded a new contract by a major European OEM, in spite of the ongoing acquisition process.
- (226) The Chinese Divestment Business is expected to increase its revenues significantly over the next 5 years and reach an EBITDA of [...] %. Valeo's operations in India are at a start-up level but the Indian Divestment Business is expected to generate a turnover of EUR [...] in 2021.
- (227) The Divestment Business is thus a profitable business with growth potential. The inclusion of Valeo's activities in China and India contributes to the viability of the Divestment Business as it allows the Purchaser access to the fast-growing Asian markets for passive hydraulic actuators and the ability to bid for global platforms.
- (228) The Divestment Business however does not represent an existing stand-alone business, but needs to be carved out from the remaining business of Valeo. Specifically, while Valeo's operations in Gemlik and India are exclusively dedicated to the production and supply of passive hydraulic actuators,¹²² the Mondovi and the Chinese Divestment Businesses require an operational carve-out and transfer of the passive hydraulic actuator activities from Valeo's other activities at the two plants. The Commission has carefully assessed whether the carve-out raises significant risks for the viability and competitiveness of the Divestment Business.
- (229) The Notifying Party has prepared a detailed carve-out plan for the transfer of the Mondovi Divestment Business, which would take place in two steps. In a first phase, prior to the closing of the legal transfer of the Divestment Business, the passive hydraulic actuator activities would be ring-fenced so as to ensure their separation from Valeo's other activities on site. In a second stage, post-closing, the production lines would be relocated to a new site. The Notifying Party would pay the relocation expenses and would cooperate with the Purchaser in securing the transfer of the assets.¹²³ The new site is in the close vicinity of the current plant (1km away) and is ready for use within [...]. The production assets would remain the same and will be operated by the same employees, supervisors and management post-transfer. The production lines will be transferred sequentially with the assistance of machine manufacturers and will be tested by the Purchaser and the OEM customers after re-assembly in the new location. To avoid supply disruptions, Valeo will build safety stocks consisting of the volumes required for the time it takes to dismantle, transfer and

¹²¹ Valeo is active in PHAs in South Korea through its [...] participation in VPH, its local joint-venture with Pyeong Hwa Clutch Ind. Co., Ltd. ([...]) and Pyeong Hwa Automotive Ind. Co., Ltd. ([...]). VPH has only a marginal supply activity of PHAs which is limited to the supply of PHAs to [...].

¹²² Their divestment therefore implies only a legal separation and transfer of the respective business units to the Purchaser and can therefore be executed in a straightforward manner, in a short period of time.

¹²³ 30% of the purchase price of the Divestment Business will be put in escrow to ensure Valeo's continued cooperation.

approve production lines in the new plant, plus a [...] % buffer stock which can be increased to [...] % or higher if the customer so requests it.¹²⁴

- (230) The transfer plan was agreed with the Purchaser. In addition, in the period April - May 2017 the transfer plan was reviewed by the consultancy firm Deloitte which concluded positively on its practical feasibility, on the ability to maintain operational continuity during the transfer and on the ability of the business to operate post-transfer. The transfer is expected to be completed within [...] after closing.¹²⁵
- (231) The Commitments include the transfer of all personnel currently working in Mondovi who are exclusively dedicated to the passive hydraulic actuator activity. Key personnel which is dedicated both to passive hydraulic actuator and to Valeo's DMF/clutch activities in Mondovi will also be part of the Divestment Business. In addition, the Notifying Party commits not to solicit for employment any of the employees transferred with the Divestment Business for a period of three years from the transfer.
- (232) The Notifying Party has also prepared and agreed with the Purchaser a transfer plan for the Chinese Divestment Business, on terms similar to that of the Mondovi Divestment Business described above.
- (233) The Commitments include the transfer of all the patents used for the production of all passive hydraulic actuators manufactured by the Divestment Business, as well as all licenses, permits and authorisations necessary to manufacture or sell them.
- (234) Valeo will transfer all its existing contracts with OEM customers relating to the passive hydraulic actuator activity. In addition, Valeo undertakes not to compete with the current OEM business or the booked OEM business (i.e. contracts for the supply of passive hydraulic actuators awarded to Valeo prior to the transfer, but for which the start of production has not occurred) for a period of three years. In addition, Valeo will continue to purchase passive hydraulic actuator products on the aftermarket from Raicam for a period of [...] after the transfer, and committed to use its best efforts to introduce Raicam to Valeo Service to negotiate an aftermarket distribution agreement.
- (235) The Commitments include the transfer of existing contracts with all of the suppliers relating to the passive hydraulic actuator activity. There are inputs to the passive hydraulic actuator activity which are currently supplied internally within the Valeo group. There exist several alternative sources of supply for the inputs in question. Nevertheless, to avoid disruption to the production process, the Notifying Party will enter into a transitional agreement for the supply of sensors and plastic parts to the Divestment Business for a period of up to two years after the transfer.
- (236) The Notifying Party also commits to enter into a global transitional service agreement for a period of up to [...] for the provision of infrastructure and hosting services, including IT services, for the Mondovi, Gemlik and Chinese Divestment Businesses.
- (237) In light of the above, the Commission considers that the transfer of the assets can be carried out with minimal risks of disruption to the operation of the business, in a short period of time, and that the Divestment Business will have all the resources necessary to

¹²⁴ Form RM, pp. 11-12. Valeo's letter of 29 September 2016 to the case team.

¹²⁵ Form RM, Annex 2.1.

operate on a stand-alone basis and compete effectively with the new entity on a lasting basis.

- (238) The results of the market test support this assessment. With the exception of certain market test participants which did not express a view on the viability of the Divestment Business, all respondents indicated they consider the Divestment Business to be viable and that the carve-out of the Mondovì PHA business does not impose a significant risk for the viability and operational integrity of the Divestment Business considering the measures put in place.¹²⁶ None of the market test respondents indicated that any additional items need to be transferred from Valeo in order to render the Divestment Business viable and competitive. The only element of improvement emerging from the market test relates to the level of safety stock necessary to avoid supply disruptions during the transfer of production lines, which a majority of market participants considered should be in excess of [...] (in excess of forecasted demand over the period of time required to carry out the transfer).¹²⁷ As a result of this, the Notifying Party revised the safety stock level which it commits to prepare to [...] and confirms that the level would be increased to [...] or higher if the customer so requests it.
- (239) In light of the above, the Commission considers that the Divestment Business is viable and competitive.

5.3 Conclusion on Proposed Commitments

- (240) On the basis of the assessment described above and in light of the outcome of the market investigation and the information made available to it, the Commission considers that the Proposed Commitments are suitable to remove the serious doubts as to the compatibility of the Proposed Transaction with the internal market in respect of the sales of passive hydraulic actuator modules and components at OEM/OES level in the EEA, and at IAM level in each Member State, and that they consist of the divestment of a viable and competitive business.

6 PURCHASER APPROVAL

6.1 Assessment of the suitability of the purchaser

6.1.1 Framework for the Commission's assessment of the purchaser

- (241) As mentioned on paragraph 199, on 11 July 2017, Valeo and AP Automotive products S.r.l., a fully-owned subsidiary of Raicam Industrie S.r.l. ("Raicam"), entered into a put option agreement ("Put Option") pursuant to which the latter irrevocably undertook to acquire the Divestment Business, upon the terms and subject to the conditions set out in a draft framework agreement attached to the Put Option.
- (242) As said earlier, paragraph 56 of the Remedies Notice provides for situations when Parties identify and enter into a legally binding agreement with a buyer outlining the essentials of the purchase during the Commission procedure (fix-it-first remedy). In this case, the Commission will be able to decide in the final decision whether the transfer of the divested

¹²⁶ Q5 Market test remedies – IAM customers, responses to questions 2 and 4. Q6 Market test remedies – OEM customers, responses to questions 2 and 4. Q7 Market test remedies – Competitors, responses to questions 2, 5, 9 and 11.

¹²⁷ Q6 Market test remedies – OEM customers, responses to question 5. Q7 Market test remedies – Competitors, responses to question 8.

business to the identified purchaser will remove the competition concerns. Under the fix it first assessment, if the Commission authorises the notified concentration, no additional Commission decision for the purchaser approval will be needed and the closing of the sale of the divested business may take place shortly afterwards.

- (243) Against this background, the Commission has assessed whether the proposed buyer of the fix-it-first remedy would fulfil the standard purchaser criteria as set out in the Remedies Notice¹²⁸, and most notably if:
- (a) the purchaser is independent of and unconnected to the parties;
 - (b) the purchaser possesses the financial resources, proven relevant expertise and has the incentive and ability to maintain and develop the divested business as a viable and active competitive force in competition with the parties and other competitors; and,
 - (c) the acquisition of the business by a proposed purchaser is neither likely to create new competition problems nor to give rise to a risk that the implementation of the commitments will be delayed. Therefore, the proposed purchaser should be reasonably expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the business to be divested.

6.1.2 *Results of market test*

- (244) Raicam is an established car part supplier, with a strong presence in Italy as well as operations in the EEA and several other countries such as India. Originally focused on brake systems, Raicam entered the clutch business in 2005 with the acquisition of the English car-part supplier AP Automotive Products. Raicam has now three clutch plants in the UK, in Italy and in India and two brake plants in Italy. Raicam also has dedicated R&D staff and three R&D centres, including one in the clutch area.
- (245) Raicam has an established presence on the OEM market(s) in both the brake and clutch areas, where – depending on the specific products - it operates as a Tier 1 or Tier 2 supplier for some of the main OEMs, such as [...].
- (246) The vast majority of OEMs responding to the market test has indicated that they consider Raicam to be a suitable purchaser for the Divestment Business.
- (247) As regards the IAM customers, the vast majority of the respondents that have provided a substantiated reply to the market test have indicated that they consider Raicam to be a suitable purchaser for the Divestment Business. A significant proportion of respondents indicated that they consider Raicam a suitable purchaser for the Divestment Business, whilst an equivalent number of respondents did not express an opinion. In any event, no IAM respondent indicated that Raicam would not be a suitable buyer for the Divested Business.¹²⁹

6.1.3 *The purchaser is independent of and unconnected to the parties*

- (248) The Commission concludes that Raicam is independent and unconnected to the Parties.
- (249) First, there are no common institutional investors between Raicam and either of the Parties.

¹²⁸ Remedies Notice para.48.

¹²⁹ Q5 Market test remedies – IAM customers, responses to question 6.

- (250) Second, there are no directors in common between Raicam and either of the Parties.
- (251) Third, there are no major contractual relationships between Raicam and either of the Parties. The only commercial ties relate to [...].
- (252) Fourth, the non-compete provision included the Commitments is limited in scope (to the ongoing and awarded business) and time (to [...] following the transfer). It was introduced at the request of the Purchaser in order to avoid a situation where OEMs would trigger the change of control clause in their contracts immediately after the transfer of the Divestment Business. This provision would thus ensure that the purchaser can supply the existing customers but would not have any impact on future competition between Valeo and the Purchaser.

6.1.4 *The purchaser has sufficient financial resources, proven relevant expertise and has the incentive and ability to maintain and develop the divested business.*

- (253) For the reasons below, the Commission concludes that Raicam has sufficient financial resources to maintain and develop the Divestment Business as a viable and active competitive force on the market.
- (254) First, Raicam has shown sustained profitability in the past years. EBITDA margin have consistently been greater than [...] in the past years and the net income improved from 2013 (EUR [...] million) to 2015 (EUR [...] million).
- (255) Second, Raicam has a very low debt which reflects in a very low debt to equity ratio. Following the acquisition of the Divestment Business, Raicam's financial debt and debt to equity ratio will increase but will nonetheless remain low.
- (256) As regards the proven expertise, Raicam is not active in the manufacturing and supply of PHA and its components. However, Raicam produces products which are complementary to PHA as for example clutches, flywheels, torsional dampers and pedal boxes. For these products Raicam uses inter alia the AP brand. As explained by one OEM responding to the market test: "*Raicam manufactures all the necessary PHA components connected to the divestment businesses, and therefore in its opinion the proposed remedies will reinforce Raicam's position as a full system supplier and not a mere components supplier*".¹³⁰
- (257) Finally, Raicam will have the incentive to maintain and develop the Divestment Business. First, the acquisition of the Divestment Business will allow Raicam to become an integrated supplier of transmission modules, hence likely increasing its competitiveness on the OEM market.
- (258) Second, Raicam will have a strong incentive to maintain the Divestment Business as it will allow it to obtain the necessary technological know-how to facilitate the industrialisation of the next generation active actuator currently under development. This is considered as very important as the trend of the automotive sector is towards automation, and therefore in the future active actuators will to a large extent replace passive actuators. One OEM indicated in the market test that "*Raicam, by purchasing the Divestment Business, will complete its*

¹³⁰ Q6 Market test remedies – OEM customers, responses to question 8.

product portfolio of clutches and controls and will be also prepared for next hybrid age".¹³¹

6.1.5 *The acquisition will not create prima facie competition concerns*

- (259) Raicam currently does not manufacture PHAs and/or its components and therefore the acquisition of the Divestment Business will not generate any horizontal overlap. Also, on the basis of the information available to the Commission, Raicam is not active in any market which is upstream or downstream to those where the Divestment Business is active. Hence, the proposed acquisition will also not give rise to vertical relationships.

6.1.6 *Conclusion on suitability of the purchaser*

- (260) In the light of the above, the Commission concludes that Raicam is a suitable purchaser for the Divestment Business and therefore no additional buyer approval decision is necessary.

6.2 Assessment of the proposed agreement

- (261) As mentioned in paragraph 199 above, on 11 July 2017 Valeo and Raicam entered into the Put Option. The terms of the sale and purchase of the Divestment Business are enshrined in the Framework Agreement attached to the Put Option. The terms of the Framework Agreement have been already agreed upon between Raicam and Valeo and submitted to the Commission for approval. The present decision is based upon the assumption that the terms of the Framework Agreement will not be renegotiated.
- (262) The Commission takes the view that the SPA and related ancillary agreements as modified by Valeo by letter dated 29 September 2017 are compliant with the Commitments. This is for the following reasons
- (263) The business object of the sale and purchase provided for by in the Framework Agreement correspond to that of the Divestment Business as defined in the Commitments. Particularly it comprises:
- (a) all tangible assets necessary for the operation of the business;
 - (b) all intangible assets necessary for the operation of the business, including the intellectual property necessary to run the business;
 - (c) all licenses, permits and authorisations issued by governmental organisations for the benefit of the divestment business;
 - (d) all contracts, leases, commitments and customer orders of the Divestment Business; and,
 - (e) the personnel required for the running of the Divestment Business.
- (264) The Transitional Supply Agreement attached to the Framework Contracts is in line with the obligation arising from paragraph 7 of the Commitments. Particularly the Transitional Supply Agreement provides for a transitional period of [...] after Closing, of all current arrangements under which Valeo Group supplies sensors and plastic parts to the Divestment Business.
- (265) Valeo and Raicam have also entered into a Transitional Service Agreement for a period of [...] as provided for in paragraph 8 of the Commitments.

¹³¹ Q6 Market test remedies – OEM customers, responses to question 8.

- (266) From the information available to the Commission, the Framework Agreement is also in line with Section C of the Commitments ("Related Commitments") and particularly:
- (267) As regards the preservation of viability, marketability and competitiveness of the Divestment Business Raicam will have available all services, personnel, assets, properties and intellectual properties necessary and sufficient to operation the Business in all material aspects. Also, during the Interim Period, Valeo undertook to abstain from any exceptional corporate operation (liquidation, dissolution, issue of additional securities etc.)
- (268) A non-solicitation clause for a period of [...] has been agreed upon. For some of the Key Personnel, including the HSM, the non-solicitation obligation will last [...];
- (269) A non-compete clause for a period of [...] for the current and the booked businesses has been provided for; and,
- (270) Valeo has undertaken to proceed with a physical separation of the sites constituting the Divestment Business. This appears to be in line with the hold-separate obligation provided for in the Commitments.

6.3 Conclusion on the proposed purchaser and agreement

- (271) On the basis of the above assessment, the Commission approves Raicam Industrie S.r.l. as a suitable purchaser for the above-mentioned reasons.
- (272) On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

7 CONDITIONS AND OBLIGATIONS

- (273) Under 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.
- (274) The achievement of the measure that gives rise to the 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 no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6)(b) 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.
- (275) The Commitments and all Annexes thereto are attached to and constitute an integral part of this decision. 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 and of the respective Annexes, whereas the remaining sections of the Commitments constitute obligations on the Parties.

8 CONCLUSION

- (276) For the above reasons, the Commission has decided not to oppose the notified operation 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 sections B and C 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*

**Case M. 8102 – VALEO/FTE GROUP
COMMITMENTS TO THE EUROPEAN COMMISSION
FIX-IT-FIRST REMEDY**

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Valeo Holding GmbH (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 acquisition of the FTE Group by the Notifying Party (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 Parties and/or by the ultimate parents of the Parties, 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 (the “*Consolidated Jurisdictional Notice*”).

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

Closing: the transfer of the legal title to the Divestment Business to the Purchaser that is expected to take place by [...].

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee’s objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

Effective Date: the date of adoption of the Decision.

Hold Separate Manager: the person appointed by Valeo for the 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 Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

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

Notifying Party: Valeo Holding GmbH, a company duly organized under the German law registered on the commercial register at the local court of Stuttgart under HRB 754942, whose head office is located at ValeostraÙe 1, 74321, Bietigheim-Bissingen (Germany), duly represented by Robert Charvier (Chief Financial Officer of Valeo). Valeo Holding GmbH is ultimately held and controlled by Valeo S.A., a company duly organized under the French law registered on the Paris commercial register under RCS 552 030 967, whose head office is located at 43, rue de Bayen 75017 Paris, duly represented by Robert Charvier (Chief Financial Officer of Valeo).

Parties: the Notifying Party and the undertaking that is the target of the concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: AP Automotive Products S.r.L, whose registered office is at via Montecarottese n. 2, Maiolati Spontini (AN) 60030, Italy. AP Automotive Products is a fully-owned subsidiary of the company Raicam Industrie S.r.l. ("Raicam"), whose registered office is at Via Teramo 5, Manoppello (PE), 65024, Italy.

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

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, the Notifying Party commits to divest, or procure the divestiture of the Divestment Business to the Purchaser according to the procedure described in these Commitments. The proposed divestiture shall not be implemented unless and until the Commission has approved the terms of the divestiture in accordance with these Commitments. The sale and transfer of the Divestment Business shall only be consummated if the Concentration is consummated. The consummation of the Concentration is expected to take place no later than [...]. In the event that the proposed Concentration is not consummated, these Commitments shall lapse in their entirety.
3. The Concentration shall not be implemented before the Notifying Party has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the agreement.
4. The Notifying Party shall be deemed to have complied with the Commitments in Section B upon the Notifying Party having:
 - (a) Entered into a final binding agreement with the Purchaser;

- (b) Transferred the Divestment Business to the Purchaser by [...];
 - (c) Supervised and born the costs of the relocation of the Mondovi and Chinese Divestment Businesses handled by the Purchaser; and
 - (d) Entered into and complied with the transitional supply agreements as described in the Schedule.
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 Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 35 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business consists of (i) the manufacturing plant of Mondovi (Italy) for the development, production and supply of passive hydraulic actuators currently operated by the Notifying Party, except for the development and production activities dedicated to the production of dual-mass flywheels or clutches for the Gran Turismo category (the “**Mondovi Divestment Business**”); (ii) the entire manufacturing plant of Gemlik (Turkey), which is fully dedicated to the production and supply of passive hydraulic actuators (the “**Gemlik Divestment Business**”); (iii) Valeo’s operations in China for the production and supply of passive hydraulic actuators (the “**Chinese Divestment Business**”); and (iv) Valeo’s start-up operations in India for the production and supply of passive hydraulic actuators (the “**Indian Divestment Business**” or the “**Indian Assets**”, and together with Mondovi, Gemlik and China, the “**Divestment Business**”). The Mondovi, Gemlik, Chinese and Indian Divestment Businesses shall be sold as a whole to a single Purchaser only to ensure that (i) the Divestment Business is viable and that (ii) the Divestment Business continues to benefit from the support and R&D functions currently provided by the Mondovi Divestment Business. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
- (a) all tangible and intangible assets (including intellectual property rights) necessary for the operation of the Divestment Business;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business, as well as all customer, credit and other records of the Divestment Business; and

(d) the Personnel.

7. The Divestment Business includes the benefit, for a transitional period of up to [...] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which [...] and [...] supply sensors and plastic parts respectively to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the business units concerned at [...].
8. The Divestment Business includes a global transitional service agreement for a maximum period of [...] to provide the Purchaser with infrastructure and hosting services, including IT services, for Mondovi, Gemlik and China on terms and conditions detailed in the Schedule.
9. Valeo also committed to use its best efforts to introduce the Purchaser to Valeo Service (Valeo aftermarket branch) in order to negotiate in good faith an aftermarket distribution agreement with Valeo Service. Raicam will continue to supply and Valeo will continue to purchase passive hydraulic actuator components on the aftermarket for a period of [...] after Closing.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

10. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the 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 Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available, or procure to make available, sufficient resources for the development of the 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 industry practice), to encourage all Key Personnel to remain with the Divestment Business. Where, nevertheless,

individual members of the Key Personnel exceptionally leave the 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 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.

Hold-separate obligations

11. The Notifying Party commits to procure that the Divestment Business is kept separate from the business that the Notifying Party will be retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by the Notifying Party have limited involvement in the Divestment Business as necessary to ensure its continuity; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Notifying Party and do not report to any individual outside the Divestment Business.
12. Until Closing, the Notifying Party shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which the Notifying Party is retaining. The Notifying Party shall appoint a Hold Separate Manager, who shall be part of the Key Personnel. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest 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. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 10(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

13. The Notifying Party shall implement, or procure to implement, all necessary measures to ensure that it does not, after Effective Date and before the Closing Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Notifying Party before the Effective Date will 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 Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible within [...] as of Effective Date, without compromising the viability of the Divestment Business. The Notifying Party may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Notifying Party is required by law.

Non-solicitation clause

14. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing. This non-solicitation period is extended to [...] after Closing for [...].

Non-compete obligation

15. Valeo undertakes, for a period of [...] after the Closing Date, not to compete with the “Current Business” (i.e., supply to OEM customers of products of the Divestment Business which start of production has occurred on or before the Closing Date) and the “Booked Business” (i.e., contract for the supply of products of the Divestment Business which have been awarded to Valeo on or before the Closing Date) carried out in Italy, Turkey, China and India.

Section D. Trustee

I. Appointment procedure

16. 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.
17. 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.
18. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Notifying Party

19. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of three natural or legal persons whom the Notifying Party proposes to appoint as the Monitoring 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 17 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; and

- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

20. 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

21. 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 16 and 20 of these Commitments.

Trustee nominated by the Commission

22. 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

23. 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

24. 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 co-operation with the Hold Separate Manager, the on-going management of the 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 Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 10 and 11 of these Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 12 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 Divestment Business,
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
 - make sure that any Confidential Information relating to the 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 as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Notifying Party or Affiliated Undertakings;
 - (e) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.
- (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 Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
 - (iv) act as a contact point for any requests by third parties in relation to the Commitments;
 - (v) 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 Divestment Business as well as the splitting of

assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process;

- (vi) provide to the Commission a written report within 15 days after the end of every quarter during the first year after Closing, and every six months for the next two years, that shall cover the relocation of the Mondovi and Chinese Divestment Businesses as well as the transitional supply and service agreements so that the Commission can assess whether these aspects are executed in a manner consistent with the Commitments;
- (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;

III. Duties and obligations of the Parties

- 25. The Notifying Party shall provide and shall cause its advisors 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 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 and the Divestment Business shall provide the Trustee upon request with copies of any document. The Notifying Party and the Divestment Business 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.
- 26. 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 Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Notifying Party shall keep the Monitoring Trustee informed of all developments in the divestiture process.
- 27. 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 willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
- 28. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party's approval if the Trustee considers the appointment of such advisors 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 advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after

having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 27 of these Commitments shall apply *mutatis mutandis*.

29. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party 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*.
30. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
31. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

32. 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.
33. If the Trustee is removed according to paragraph 32 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 hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-22 of these Commitments.
34. Unless removed according to paragraph 32 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 E. The review clause

- 35. 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.

- 36. The Commission may further, in response to a reasoned request from the Notifying Parties 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 F. Entry into force

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

.....
(Signed)
duly authorised for and on behalf of Valeo Holding GmbH

Case M. 8102 – VALEO/FTE GROUP
COMMITMENTS TO THE EUROPEAN COMMISSION
SCHEDULE

The Divestment Business consists of (i) Valeo’s manufacturing plant in Mondovi (Italy) for the development, production and supply of passive hydraulic actuators (“PHA”), except for the development and production activities dedicated to the production of dual-mass flywheels (“DMF”) or clutches for the Gran Turismo category (hereinafter “**Mondovi**” or the “**Mondovi Divestment Business**”), (ii) Valeo’s manufacturing plant of Gemlik (Turkey) for the production and supply of passive hydraulic actuators (hereinafter “**Gemlik**” or the “**Gemlik Divestment Business**”), (iii) Valeo’s operations in China for the production and supply of passive hydraulic actuators (hereinafter “**China**” or the “**Chinese Divestment Business**”), and (iv) Valeo’s start-up operations in India for the production and supply of passive hydraulic actuators (hereinafter the “**Indian Divestment Business**”), and together with Mondovi, Gemlik and China, the “**Divestment Business**”).

Pursuant to a put-option letter dated July 11, 2017 (the “Put Option”), AP Automotive Products S.r.L, whose registered office is at via Montecarottese n. 2, Maiolati Spontini (AN) 60030, Italy (thereafter, “AP Automotive Products” or the “Purchaser”) irrevocably undertook to acquire the Divestment Business, upon the terms and subject to the conditions set out in a draft framework agreement attached to the Put Option. AP Automotive Products is a fully-owned subsidiary of the company Raicam Industrie S.r.l. (“Raicam”), whose registered office is at Via Teramo 5, Manoppello (PE), 65024, Italy. Pursuant to the Put-Option, Valeo also granted the Purchaser an exclusivity negotiation period [...] and undertook not to, directly or indirectly, including through their directors, officers, employees or advisors, initiate, solicit, encourage, facilitate, maintain, pursue or follow up any discussion or negotiation or enter into any contract or arrangement, with any person other than the Purchaser for the purpose of selling the Divestment Business. The Put Option agreement executed on July 11, 2017 is provided as Annex 1.1. to the Form RM.

LIST OF ANNEXES TO THE SCHEDULE

<u>Annex 1</u>	Key financial figures for the Divestment Business
<u>Annex 2</u>	List of patents used in the PHA area
<u>Annex 3</u>	[...] Letter
<u>Annex 4</u>	List of patents used by VPH
<u>Annex 5</u>	Description of patents used by VPH
<u>Annex 6</u>	List of current European OEM Agreements
<u>Annex 7</u>	Minutes of meetings with [...]
<u>Annex 8</u>	List of Mondovi personnel
<u>Annex 9</u>	List of Mondovi key personnel
<u>Annex 10</u>	Current internal arrangement for the supply of sensors
<u>Annex 11</u>	Draft supply agreement for sensors between Valeo and Raicam
<u>Annex 12</u>	Open orders of plastic parts
<u>Annex 13</u>	Draft supply agreement for plastic parts between Valeo and Raicam
<u>Annex 14</u>	Global transitional services agreement
<u>Annex 15</u>	Draft supply agreement with Valeo Service
<u>Annex 16</u>	List of Gemlik personnel
<u>Annex 17</u>	List of Gemlik key personnel
<u>Annex 18</u>	Joint-venture agreement in China
<u>Annex 19</u>	List of OEM agreements in China
<u>Annex 20</u>	List of personnel in China
<u>Annex 21</u>	Organization chart in China

The Mondovi Divestment will require a carve-out of the PHA activity, including all the relevant employees, all the corresponding supply agreements with OEMs, and all the relevant tangible and non-tangible assets. Valeo commits to separate the PHA activity from the DMF/clutch activity through a physical fence in the Mondovi plant. Prior consultations with Works Councils have started on July 11, 2017 following the execution of the Put Option.

After Closing, Valeo and the Purchaser will cooperate in good faith to organize, supervise and secure the proper transfer of the production lines. Valeo will bear the costs of the transfer. In this respect, Valeo has prepared a detailed plan intended to ensure the continuity of the supplies during transfer while allowing the Divestment Business to bid for new businesses. Valeo has also hired an independent consultancy firm, Deloitte, to review and confirm that its transfer plan was reliable. Deloitte has issued a report that has been submitted as Annex 1.2 to the Form RM.

2. In accordance with paragraphs 5 and 6 of these Commitments, the Mondovi Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

All production lines dedicated to the activity of PHAs at the Mondovi plant, namely:

[...]

All R&D facilities dedicated to the activity of PHAs at the Mondovi plant, including mainly:

[...]

All equipment, furniture, supplies, vehicle, spare parts, tools, personal property dedicated to the activity of PHAs at the Mondovi plant.

(b) the following main intangible assets:

All patents used for the production of all PHAs manufactured in Mondovi. The list of relevant patents is submitted as Annex 2. This list notably includes:

1. Valeo's Patent [...] (according to [...] Letter submitted as Annex 3). Given the positive outcome of the meeting with [...], Valeo does not expect any objection from [...] to the Divestment Business and therefore on the transfer of the shared patent;
2. [...] patents that are currently used by Valeo's joint-venture in South Korea (Valeo Pyeong Hwa Co.), exclusively for the production of PHAs for [...] (as listed in Annex 4). Valeo will request a license back from the Purchaser for these patents. A detailed description of these [...] patents and a draft license-back agreement are provided as Annex 5.

All databases and software programs, source codes and user manuals owned, used, leased by or licensed to Valeo for the development and production of all PHAs manufactured in Mondovi.

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

Valeo will transfer all licences, permits and authorisations issued by any governmental organization and held by Valeo that are necessary to manufacture and/or sell PHAs at the Mondovi plant including permits in the environmental field for (i) water supply; (ii) air emissions; and (iii) wastewater discharge.

(d) the following main contracts, agreements, leases, commitments and understandings, subject to third parties' consent rights to the extent such consent is contractually required:

- Valeo's existing contracts with OEM customers relating to the PHA activity (*see Annex 6*). Valeo has consulted OEM customers currently supplied by the Divestment Business and organized a meeting with each European OEM customer (namely [...]) of the Divestment Business to introduce the Purchaser and obtain assurances that such OEM customers are not hostile to the Purchaser and would not object to the continuation of on-going contracts. Both the Purchaser and Valeo consider that these meetings were satisfactory as OEM customers reacted positively to the project and did not object to the transfer of the Divestment Business. It seems that these OEMs consider that the Purchaser has the expertise and necessary experience to run the Divestment Business efficiently. The minutes of the meetings are provided as Annex 7;
- Valeo's existing contracts with all of the suppliers relating to the PHA activity.

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

Valeo's existing contracts with customers worldwide relating to the PHA activity of the Mondovi plant, namely:

Client*	Category	2016 Turnover (M€)	% of Mondovi's turnover
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...] ¹	[...] ¹	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
TOTAL SALES	OEM/IAM	[...]	100%

* Please note that Valeo did not generate any passive hydraulic actuation sales with VW and Ford in 2016 yet.

(f) the following Personnel:

All personnel currently working in the Mondovi plant who are exclusively dedicated to the PHA activity. A detailed list of the personnel working in Mondovi is provided as Annex 8. Prior consultations with Works Councils have started on July 11, 2017 following the execution of the Put Option.

Below is also a table of the [...] R&D employees of Mondovi that will be transferred with the Divestment Business.²

No.	Function	Department
[...]	[...]	[...]

(g) the following Key Personnel:

All key personnel currently working in the Mondovi plant who are exclusively dedicated to the PHA activity and some other key employees, who are not exclusively dedicated to the PHA business. The key personnel that will be transferred with the Divestment Business are [...].

In Annex 9, Valeo provides a chart with the names and functions of the Mondovi key personnel, which will be transferred with the Divestment Business. Prior consultations with Works Councils have started on July 11, 2017 following the execution of the Put Option. As illustrated in Annex 9,

1 [...].

2 Please note that [...] employees will leave Valeo within the next few months.

Valeo proposes that the Hold Separate Manager of the Divestment Business be [...].

(h) the arrangements for the supply with the following products or services by Valeo or Affiliated Undertakings for a transitional period:

- The intra-group arrangement for the supply of sensors entered into with [...] (the letters of intent sent by [...] regarding the supply of sensors (i) for [...] and (ii) for [...] are provided as Annex 10). The agreement that will be entered into between Valeo and the Purchaser for the supply of sensors at Closing Date is also provided as Annex 11);

- The intra-group arrangement for the supply of plastic parts (*i.e.*, plastic body of CMCs and CSCs as well as washers used for PHAs) entered into with [...] are provided as Annex 12). The agreement that will be entered into between Valeo and the Purchaser for the supply of plastic parts at Closing Date is also provided as Annex 13).

- Global transitional service agreement for the supply of hosting/infrastructure services, including IT services until the relocation the production lines is complete. The global transitional service agreement that will be entered into between Valeo and the Purchaser at Closing Date is also provided as Annex 14).

- Valeo also committed to use its best efforts to introduce Raicam to Valeo Service in order to negotiate in good faith an aftermarket distribution agreement which will allow Raicam to ensure an effective presence on the aftermarket and to develop alternative sales channels for the IAM with other distribution networks. A draft version of the aftermarket distribution agreement is provided as Annex 15. Raicam will continue to supply and Valeo will continue to purchase PHA products on the aftermarket for a period of [...] after closing (See Annex 1.1.a of the Form RM - Article 25(c) of the draft Framework Agreement).

3. The Mondovi Divestment Business shall not include:

- (i) The DMF business activity including the production lines dedicated to DMFs, all essential tangible and intangible assets, all personnel and key personnel involved in the DMF activity exclusively.
- (j) The clutch business activity for the Gran Turismo category including the production lines dedicated to clutches, all essential tangible and intangible

assets, all personnel and key personnel involved in the clutch activity exclusively.

- The employees dedicated to the DMF/clutch activity are described in Paragraph 1 above;
- About [...] of the surface of the Mondovi plant are dedicated to the DMF/clutch activity.

4. 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 Mondovi Divestment Business and necessary for the continued viability and competitiveness of the Mondovi Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Not applicable.

SECTION 2 GEMLIK

5. Description of the Gemlik Divestment Business

Gemlik is a Valeo production facility, which manufactures PHA systems and components (including Clutch Master Cylinders, Concentric Slave Cylinders, Cluth Release Cylinders and Clutch Pipes). Until [...], all the PHAs manufactured in Gemlik were sold internally to Mondovi. As from [...], Gemlik started to have limited external sales [...].

The Gemlik plant is operated by Valeo Otomotiv Sanayi VE Ticaret A.S., a company which is ultimately held by Valeo S.A. The divestment of Gemlik will be carried out through a legal carveout of Valeo Otomotiv Sanayi VE Ticaret A.S.of Gemlik into a Turkish NewCo. No operation carveout is required out is required beyond IT separation.

In 2016, the Gemlik production facility achieved a turnover of [...] million euros in the field of PHAs, including [...] million euros of internal sales to Mondovi. The key financial figures relating to the Gemlik plant for the years 2015 to 2021 are provided as Annex 1.

The Gemlik plant is located in the Bursa free trade zone. It is located on a land of 3,025 sqm.

The Gemlik plant is fully dedicated to the PHA business and does not manufacture or sell any other product.

As at July 17, 2017, the Gemlik production facility employed [...] employees. One of these employees was a temporary worker dedicated to direct labor. Below is the current allocation of employees working at the Gemlik plant.

	Gemlik employees
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
TOTAL	[...]

6. In accordance with paragraphs 5 and 6 of these Commitments, the Gemlik Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

All production lines dedicated to the activity of PHAs at the Gemlik plant, namely:

[...]

All equipment, furniture, supplies, vehicle, spare parts, tools, personal property dedicated to the activity of PHAs at the Gemlik plant.

(b) the following main intangible assets:

All patents used for the production of all PHAs manufactured in Gemlik. The list of relevant patents is submitted as Annex 2.

All databases and software programs, source codes and user manuals owned, used, leased by or licensed to Valeo for the development and production of all PHAs manufactured in Gemlik.

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

Valeo will transfer all licences, permits and authorisations issued by any governmental organisation and held by Valeo that are necessary to operate the Gemlik plant, including permits in the environmental field, namely:

- Water discharge letter;
- Operation permit;
- Operation license;
- Environmental Impact assessment; and
- Noise exemption letter.

(d) the following main contracts, agreements, leases, commitments and understandings, subject to third parties' consent right to the extent such consent is contractually required:

- Valeo's existing contracts with OEM customers relating to the PHA activity (*see Annex 6*). Valeo has consulted OEM customers currently supplied by the Divestment Business and organized a meeting with each European OEM customer (namely [...]) of the Divestment Business to introduce the Purchaser and obtain assurances that such OEM customers are not hostile to the Purchaser and would not object to the continuation of on-going contracts. Both the Purchaser and Valeo consider that these meetings were satisfactory as OEM customers reacted positively to the project and did not object to the transfer of the Divestment Business. The minutes of the meetings are provided as Annex 7;

- Valeo’s existing contracts with all of the suppliers relating to the PHA activity.

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

Client	Category	2016 Turnover (M€)	% of Gemlik’s 2016 turnover
Sales to the Mondovi plant	Internal	[...]	[...]
Others [...]	External	[...]	[...]
TOTAL		[...]	[...]

(f) the following Personnel:

All personnel currently working in the Gemlik plant. A detailed list of the employees working at Gemlik is provided as Annex 16.

Below is also a table of the [...] R&D / Projects management employees of Gemlik that will be transferred with the Divestment Business.

No.	Function	Department
[...]	[...]	[...]

(g) the following Key Personnel:

All key personnel currently working in the Gemlik plant, including the [...] (see the organizational chart of Gemlik submitted as Annex 17).

As illustrated in Annex 9, Valeo proposes that the Hold Separate Manager of the Divestment Business be [...].

(h) the arrangements for the supply with the following products or services by Valeo or Affiliated Undertakings for a transitional period after Closing:

- The intra-group arrangement for the supply of sensors entered into with [...] (the letters of intent sent by [...] regarding the supply of sensors (i) for [...] and (ii) for [...] are provided as Annex 10). The agreement that will be entered into between Valeo and the Purchaser for the supply of sensors at Closing Date is also provided as Annex 11);

- The intra-group arrangement for the supply of plastic parts (*i.e.*, plastic body of CMCs and CSCs as well as washers used for PHAs) entered into with [...] are provided as Annex 12. The agreement that will be entered into between Valeo and the Purchaser for the supply of plastic parts at Closing Date is also provided as Annex 13.

- Global transitional service agreement for the supply of hosting/infrastructure services, including IT services. The global transitional service agreement that will be entered into between Valeo and the Purchaser at Closing Date is also provided as Annex 14).

- Valeo also committed to use its best efforts to introduce Raicam to Valeo Service in order to negotiate in good faith an aftermarket distribution agreement which will allow Raicam to ensure an effective presence on the aftermarket and to develop alternative sales channels for the IAM with other distribution networks. A draft version of the aftermarket distribution agreement is provided as Annex 15. Raicam will continue to supply and Valeo will continue to purchase PHA products on the aftermarket for a period of [...] after closing (See Annex 1.1.a of the Form RM - Article 25(c) of the draft Framework Agreement).

7. The Gemlik Divestment Business shall not include:

Not relevant.

8. 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 Gemlik Divestment Business and necessary for the continued viability and competitiveness of the Gemlik Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Not relevant.

SECTION 3 CHINA

9. Description of the Chinese Divestment Business

Valeo's PHA business in China is located in its Nanjing production facility, which manufactures and sells PHA systems and components (including Clutch Master Cylinders, Concentric Slave Cylinders and clutch pipes). The Nanjing plant also has a manufacturing activity of torque converters ("TC"), DMFs, dry double clutches ("DDC") and wet double clutches ("WDC"). TCs, DMFs, DDCs and WDCs are outside the scope of the Chinese Divestment Business.

The Nanjing plant is owned and operated by Nanjing Valeo Clutch Co., Ltd ("NVCC"), a joint-venture in which Valeo holds a [...] stake through Valeo International Holding B.V. ([...]) and Valeo Pyeong Hua International Ltd. ([...]). The remaining shares of NVCC are owned by DongHua Automotive Industrial Co. Ltd. ([...]). NVCC is a joint venture limited liability company whose registered office is at 88 Guangli Road, Nanjing Municipality, Jiangsu Province, China. (see the joint-venture agreement provided as Annex 18) The divestment will be carried out through the carving out from NVCC of the PHA business in China (including all the relevant employees, all the corresponding supply agreements with OEMs, and all the relevant tangible and non-tangible assets) into a Chinese NewCo. The PHA production lines and PHA R&D facilities will be transferred to a new site in the vicinity (i.e., 6 km) of the Nanjing site.

In 2016, the Nanjing production facility operated by NVCC employed [...] employees and achieved a turnover of CNY [...] (approximately € [...]).³ PHAs generated a € [...] turnover in 2016 and therefore represented about [...] of Nanjing plant's total sales. The key financial figures of the Nanjing plant for 2015 to 2021 are provided as Annex 1.

Below are the current and future allocations of employees in China, including [...] temporary workers (i.e., [...] temporary direct-labor workers and [...] temporary administrative employees) as at July 19, 2017:

³ 1 EUR = 7.3522 CNY.

After Closing, Valeo and the Purchaser will cooperate in good faith to organize, supervise and secure the proper transfer of the production lines. Valeo will bear the costs of the transfer. In this respect, Valeo has also prepared a detailed plan for China intended to ensure the continuity of the supplies during transfer while allowing the Divestment Business to bid for new businesses. This transfer plan is submitted as Annex 2.2 to the Form-RM.

10. In accordance with paragraphs 5 and 6 of these Commitments, the Chinese Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

All production lines dedicated to the activity of PHAs in China, namely:

[...]

All R&D facilities dedicated to the activity of PHAs in China, namely:

[...]

All equipment, furniture, supplies, vehicle, spare parts, tools, personal property dedicated to the activity of PHAs in China.

(b) the following main intangible assets:

All patents used for the production of all PHAs manufactured in China. The list of relevant patents is submitted as Annex 2.

All databases and software programs, source codes and user manuals owned, used, leased by or licensed to Valeo for the development and production of all PHAs manufactured in China.

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

Valeo will transfer all licences, permits and authorisations issued by any governmental organisation and held by Valeo that are necessary to operate the Chinese PHA business:

- Business Licence;
- Local Ministry of Commerce (MOFCOM)'s registration certificate of the Chinese NewCo;
- Energy-Efficiency Assessment Report;
- Nanjing National Development and Reform Commerce ("NDRC") for Approval on the project;
- Local Environmental Protection Bureau's approval on Environmental Impact Assessment;
- Safety production permit;
- Occupational health assessment certificate; and
- Fire safety inspection permit (applied by landlord)

(d) the following main contracts, agreements, leases, commitments and understandings, subject to third parties' consent right to the extent such consent is contractually required:

- Valeo's existing contracts with OEM customers relating to the PHA activity (*see Annex 19*). Valeo has consulted OEM customers currently supplied by the Divestment Business and organized a meeting with each European OEM customer (namely [...]) of the Divestment Business to introduce the Purchaser and obtain assurances that such OEM customers are not hostile to the Purchaser and would not object to the continuation of on-going contracts. Both the Purchaser and Valeo consider that these meetings were satisfactory as OEM customers reacted positively to the project and did not object to the transfer of the Divestment Business. The minutes of the meetings are provided as Annex 7;
- Valeo's existing contracts with all of the suppliers relating to the PHA activity.

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

Client	Category	2016 Turnover (M€)⁵	% of China's 2016 turnover
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
TOTAL SALES	OEM/OES	[...]	[...]

(f) the following Personnel:

All personnel currently working in China who are exclusively dedicated to the PHA activity (*see Paragraph 9* above).

All personnel shared with other businesses that are necessary to operate the Chinese Divestment Business.

A detailed list of the personnel working for the Chinese PHA business is provided as Annex 20.

⁵ 1 EUR = 7.3522 CNY.

Below is also a table of the [...] R&D employees of China that will be transferred with the Divestment Business

No.	Function	Department
[...]	[...]	[...]

(g) the following Key Personnel:

All key personnel currently working in China (*see* yellow highlights in Annex 20).

An organizational chart is also submitted as Annex 21.

(h) the arrangements for the supply with the following products or services by Valeo or Affiliated Undertakings for a transitional period after Closing:

- The intra-group arrangement for the supply of sensors entered into with [...] (the letters of intent sent by [...] regarding the supply of sensors (i) for [...] and (ii) [...] are provided as Annex 10. The agreement that will be entered into between Valeo and the Purchaser for the supply of sensors at Closing Date is also provided as Annex 11;

- The intra-group arrangement for the supply of plastic parts (*i.e.*, plastic body of CMCs and CSCs as well as washers used for PHAs) entered into with [...] are provided as Annex 12. The agreement that will be entered into between Valeo and the Purchaser for the supply of plastic parts at Closing Date is also provided as Annex 13;

- Global transitional service agreement for the supply of hosting/infrastructure services, including IT services until the relocation the production lines is complete. The global transitional service agreement that will be entered into between Valeo and the Purchaser at Closing Date is also provided as Annex 14.

- Valeo also committed to use its best efforts to introduce Raicam to Valeo Service in order to negotiate in good faith an aftermarket distribution agreement which will allow Raicam to ensure an effective presence on the aftermarket and to develop alternative sales channels for the IAM with other distribution networks. A draft version of the aftermarket distribution agreement is provided as Annex 15. Raicam will continue to supply and Valeo will continue to purchase PHA products on the aftermarket for a period of [...] after closing (See Annex 1.1.a of the Form RM - Article 25(c) of the draft Framework Agreement).

11. The Chinese Divestment Business shall not include:

- (a) The DMF business activity including the production lines dedicated to DMFs, all essential tangible and intangible assets, all personnel and key personnel involved in the DMF activity exclusively.
- (b) The TC business activity including the production lines dedicated to TCs, all essential tangible and intangible assets, all personnel and key personnel involved in the TC activity exclusively.
- (c) The DDC business activity including the production lines dedicated to DDCs, all essential tangible and intangible assets, all personnel and key personnel involved in the DDC activity exclusively.
- (d) The WDC business activity including the production lines dedicated to wet double clutches, all essential tangible and intangible assets, all personnel and key personnel involved in the friction materials activity exclusively.

12. If there is any asset or personnel which is not be covered by paragraph 10 of this Schedule but which is both used (exclusively or not) in the Chinese Divestment Business and necessary for the continued viability and competitiveness of the Chinese Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Not relevant.

SECTION 4 START-UP OPERATIONS IN INDIA

13. Description of the Indian Divestment Business

Chennai is a Valeo production facility, which manufactures clutch cover assembly, clutch disc assembly and clutch release bearings products. The Chennai plant is owned and operated by Amalgamations Valeo Clutch Private Ltd (“AVCPL”), which is a joint venture, in which Valeo has a [...] stake. The remaining shares in AVCPL are owned by Amalgamations Group ([...]). AVCPL is a Private Limited Company whose registered office is in Chennai, in the State of Tamilnadu (India).

Valeo planned to start PHA operations in India in 2017 and intends to divest its start-up operations.

In 2016, the Chennai production facility as operated by AVCPL employed [...] employees and achieved a turnover of INR [...] (approximately € [...]).⁶ Chennai has not yet generated any turnover for PHAs since the PHA production has not started. The key financial figures of the PHA operations in India for 2015 to 2021 are provided as Annex 1.

Valeo will divest all the assets that are necessary to start operations in India (the “Indian Assets”) as it had initially planned.

14. In accordance with paragraphs 5 and 6 of these Commitments, the Indian Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

All production lines dedicated to the activity of PHAs in India, namely:

[...]

(b) the following main intangible assets:

All patents used for the production of all PHAs manufactured in India. The list of relevant patents is submitted as Annex 2.

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

Not applicable.

(d) the following main contracts, agreements, leases, commitments and understandings, subject to third parties’ consent right to the extent such consent is contractually required:

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

[...]

⁶ 1 EUR = 74.3717 INR.

The following OEM agreements will be transferred with the Indian Assets:

Future Client	Business platform	Products	Order intake date	Start of Production
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]

(f) the following Personnel:

[...] employees currently working in India who are exclusively dedicated to the PHA activity, namely a [...].

(g) the following Key Personnel:

[...] employees currently working in India who are exclusively dedicated to the PHA activity, namely a [...].

(h) the arrangements for the supply with the following products or services by Valeo or Affiliated Undertakings for a transitional period after Closing:

Not applicable.

15. The Indian Divestment Business shall not include:

- (a)** The Clutch Cover Assembly business activity in Chennai including the production lines dedicated to Clutch Cover Assembly products, all essential tangible and intangible assets, all personnel and key personnel involved in the Clutch Cover Assembly activity exclusively.
- (b)** The Clutch Disc Assembly business activity in Chennai including the production lines dedicated to Clutch Disc Assembly products, all essential tangible and intangible assets, all personnel and key personnel involved in the Clutch Disc Assembly activity exclusively.
- (c)** The Clutch Release Bearing business activity in Chennai including the production lines dedicated to Clutch Release Bearing products, all essential tangible and intangible assets, all personnel and key personnel involved in the Clutch Release Bearing activity exclusively.

16. If there is any asset or personnel which is not be covered by paragraph 14 of this Schedule but which is both used (exclusively or not) in the Indian Divestment Business and necessary for the continued viability and competitiveness of the Indian Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Not relevant.

Annexes to SCHEDULE

[CONFIDENTIAL]