



EUROPEAN COMMISSION
DG Competition

Case M.10738 - LEAR / IG BAUERHIN

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/04/2023

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EUROPEAN COMMISSION

Brussels, 24.04.2023
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Lear Corporation
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The United States of America

**Subject: Case M.10738 – LEAR / IG BAUERHIN
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

Dear Sir or Madam,

- (1) On 15 March 2023, the European Commission received notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of the Merger Regulation by which Lear Corporation ('Lear', USA or the 'Notifying Party') will indirectly acquire sole control over IG Bauerhin GmbH (together with all its subsidiaries) ('IGB', Germany), Bauerhin-Elektro-Wärme GmbH ('BEW', Germany) and HG Tronic spol s.r.o. ('HG', Czechia) (IGB, BEW and HG are together the 'Target').³ Lear and IGB are designated hereinafter as the 'Parties'.

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

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 107, 23.3.2023, p. 67.

1. THE PARTIES

- (2) Lear, which is publicly listed at the NYSE under 'LEA' and has its headquarters in Michigan, USA, supplies automotive seating, wire harnesses and electronics. Lear's activity in the seating segment includes the design, development, engineering, just-in-time ('JIT') assembly and delivery of complete seat systems to original equipment manufacturers ('OEMs'), and the design, development, engineering and manufacture of all major seat components, including seat structures and mechanisms, seat heating, seat ventilation, lumbar support and massage equipment, panel heating as well as ancillary electronic units.
- (3) The Target is a privately-held supplier of automotive components based in Gründau, Germany. The Target has four business segments: (i) seat comfort (seat thermal heat mats and seat ventilation systems), (ii) interior (interior surface heaters and steering wheel heaters and sensors), (iii) seat sensors, and (iv) electronic control modules ('ECU') (control units that are supplied together with the seat thermal heat mats and steering wheel heaters). Both IGB and BEW are 100% subsidiaries of Hilmer Holding GmbH ('Hilmer Holding'), which in turn is wholly owned by [...]. 90% of the shares in HG are held by [...], the son of [...], with the remaining 10% being held by [...].

2. THE CONCENTRATION

- (4) Pursuant to a Share Purchase Agreement dated 20 May 2022 between Hilmer Holding, Mr. Josef Hilmer, Mr. Karsten Hilmer and Lear, Lear will acquire 100% of the shares in each of IGB (and indirectly all the shares of its subsidiaries), BEW and HG, and therefore the entire Target (the 'Transaction'). These acquisitions are interdependent, in such a way that one acquisition would not have been carried out without the other. The Transaction qualifies, therefore, as a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.⁴

3. UNION DIMENSION

- (5) The Transaction does not meet the thresholds of Article 1(2) or Article 1(3) of the Merger Regulation as the Union turnover of one of the Parties to the proposed Transaction (the Target) amounted to only EUR 77 million in 2021.
- (6) Nonetheless, the proposed Transaction fulfils the two conditions set out in Article 4(5) of the Merger Regulation since it is a concentration within the meaning of Article 3 of the Merger Regulation and it is capable of being reviewed under the national competition laws of at least three Member States; in this case, three Member States (namely Germany, Portugal and Spain) were capable of reviewing it.
- (7) On 25 May 2022, the Notifying Party, by means of a reasoned submission, requested that the Transaction be examined by the Commission pursuant to Article 4(5) of the Merger Regulation. A copy of that submission was transmitted to the Member States on 25 May 2022 and the Member States competent to

⁴ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01), paragraph 38 et seq.

examine the proposed Transaction did not express disagreement to the referral request within the period laid down by the Merger Regulation.

- (8) Accordingly, the notified concentration is deemed to have a Union dimension pursuant to Article 4(5) of the Merger Regulation.

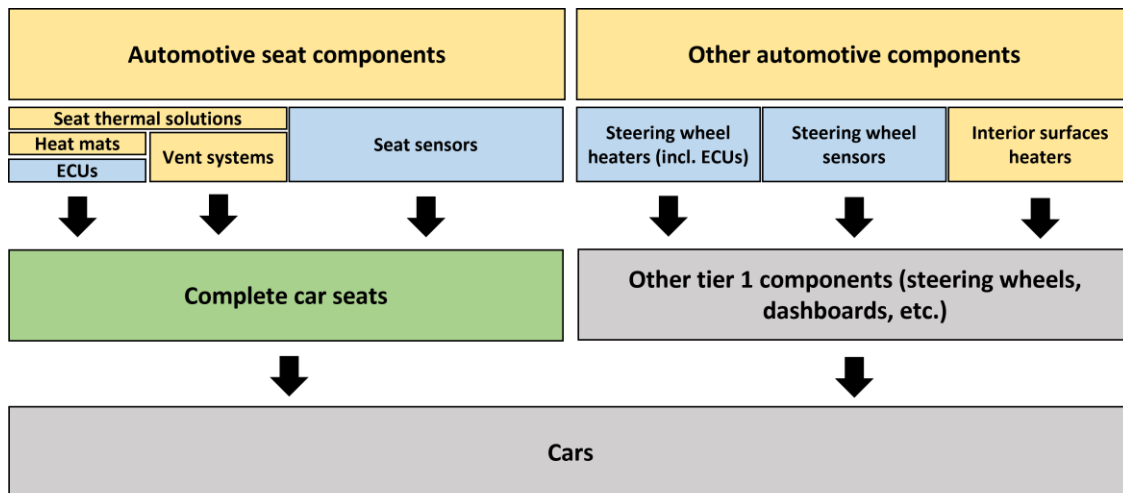
4. RELEVANT MARKETS

(9) The Parties’ activities overlap horizontally in the following activities in the automotive sector: production and supply of seat thermal solutions (heat mats and ventilation systems) and interior surface heaters.⁵ Car seats (and indirectly to a certain extent the whole car) are heated by heat mats and are cooled by ventilation systems. Seat thermal solutions have a similar function as heating, ventilation, and air conditioning systems, or HVAC systems.

(10) In addition to the horizontal overlaps, the Parties’ activities are also vertically related because the components produced upstream by the Target are inputs for the downstream JIT assembly of complete car seats where Lear is active. The JIT assembly of complete car seats is an activity whereby OEMs themselves or ‘Tier 1 suppliers’ (specialised assemblers of complete seats or vertically integrated seat manufacturers, such as Lear) assemble the different components, including those supplied by ‘Tier 2 suppliers’ (such as both Lear and the Target), in or close to the car factory of the OEM.⁶ JIT assembly requires that high volumes of complete car seats must be delivered on very short notice directly to the OEM’s production line to be immediately installed in a car.

(11) The Parties’ horizontal and vertical overlapping activities are summarised in Figure 1 below:

Figure 1 – Automotive products supplied by the Parties



- Legend:
- Target Business only
 - Lear only
 - Lear and Target Business
 - Neither Party

⁵ The horizontal overlap in relation to interior surface heaters does not result in an affected market under any plausible market definition and therefore it will not be discussed further in this Decision.

⁶ Classifying suppliers as being ‘Tier 1’, ‘Tier 2’, etc. is common practice in the automotive industry.

Source: Form CO, Figure 1

4.1. Product market definitions

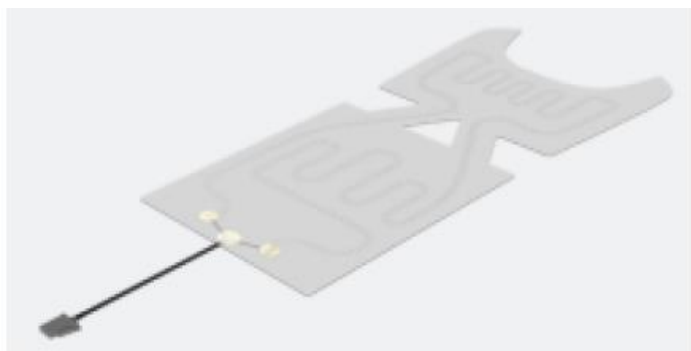
4.1.1. Seat components

- (12) In past decisions in the automotive sector, the Commission has discussed, but ultimately left open, whether separate markets exist for the production and sale of individual seat components.⁷

4.1.1.1. Seat thermal solutions

- (13) Seat thermal heat mats are positioned inside car seats, between foam and the seat cover, and they produce heat from copper wires embedded into the mat's fabric. Similarly, seat ventilation systems are positioned inside car seats, and they cool the seat through circulating air using a fan.

Figure 2 – Images of seat thermal solutions



Seat thermal heat mat



Seat ventilation system

- (14) In past decisions, the Commission has discussed, but ultimately left open, whether there is a market for the production and supply of seat thermal solutions (heat mats and ventilation systems).⁸ Furthermore, the Commission previously considered whether the supply of HVAC systems to the automotive industry is a separate market, though it ultimately left the definition open.⁹
- (15) The Notifying Party submits that seat thermal solutions: (i) serve a distinct purpose in relation to car seats; and (ii) are not a substitute for HVAC systems, but rather an extension, or complement, of them, noting that seat thermal solutions have a similar function as a HVAC system and that seat thermal solutions are more

⁷ Cases M.10512 Lear Corporation / Interior Comfort Systems Business of Kongsberg Automotive Group; M.10232 Brose / Sitech; M.8405 Lear / Grupo Antolin Assets; M.6136 JCI / Automotive Business of Keiper Recaro Group; M.6045 JCI / CRH.

⁸ Case M.10512 Lear Corporation / Interior Comfort Systems Business of Kongsberg Automotive Group.

⁹ Case M.7564 Mahle Behr / Delphi Thermal Systems Business.

frequently ordered by OEMs alongside HVAC systems to provide a holistic climate control system in a given car.¹⁰

- (16) The Notifying Party therefore submits that the product market for HVAC systems could be defined broadly as the market for heating, ventilation and climate systems, irrespective of the technology used, and thus also include the seat thermal heat and ventilation solutions produced by Lear and the Target.¹¹
- (17) In relation to further segmenting the market, the Notifying Party submits that seat thermal solutions, given their common function of regulating the temperature in the car, should be considered as a distinct market and not be further sub-segmented.¹²
- (18) The Commission notes that the majority of respondents to the market investigation¹³ consider that the manufacturing and supply of seat thermal solutions constitutes a separate market distinct from the wider market for the production and supply of seat components.¹⁴ Respondents noted that “*Seat thermal solutions serve distinct purposes that differ from other seat components (e.g., headrests, lumbar support, recliners, seat tracks). They are, therefore, not interchangeable from the perspective of the OEM. Different Tier 2 manufacturers supply these various products*” and “*Manufacturing and supply of seat thermal solutions is a specific market due to the specificity of the product technology and expertise required*”.¹⁵
- (19) The vast majority of respondents to the market investigation also consider that the manufacturing and supply of HVAC systems, on the one hand, and seat thermal solutions, on the other, are not part of the same market.¹⁶ Respondents noted that the “*product, technology, and use cases are different between HVAC units and seat thermal solutions*” and “[*a]lthough HVAC and seat thermal solution require a common thermal expertise, they have complete different product technology and assembly process making them distinct market*”.¹⁷
- (20) Furthermore, the vast majority of respondents to the market investigation consider that there are not significant differences in technology, quality or terms of supply of seat thermal solutions for different vehicle types (i.e. passenger cars, light commercial vehicles, heavy commercial vehicles) such that the product market should be sub-segmented between vehicle types.¹⁸ One respondent noted that the “*same technologies are used for all types of vehicles*”.¹⁹
- (21) Lastly, the majority of respondents to the market investigation consider the manufacturing and supply of seat thermal heat mats to be a separate market from the manufacturing and supply of seat ventilation systems.²⁰ Respondents noted that

¹⁰ Form CO, paragraphs 175-176.

¹¹ Form CO, paragraph 177.

¹² Form CO, paragraph 178.

¹³ The formal market investigation included sending three sets of electronic Requests for Information (‘eRFIs’) to market participants: an eRFI to OEMs, an eRFI to Tier 1 suppliers and an eRFI to Tier 2 suppliers (the ‘3 eRFIs’).

¹⁴ Non-confidential version of the responses to question B.B.1 of the 3 eRFIs.

¹⁵ Non-confidential version of the responses to question B.B.2 of the eRFI to Tier 1 suppliers.

¹⁶ Non-confidential version of the responses to question B.B.3 of the 3 eRFIs.

¹⁷ Non-confidential version of the responses to question B.B.4 of the eRFIs to OEMs and Tier 1 suppliers.

¹⁸ Non-confidential version of the responses to question B.B.7 of the 3 eRFIs.

¹⁹ Non-confidential version of the responses to question B.B.8 of the eRFI to Tier 1 suppliers.

²⁰ Non-confidential version of the responses to question B.B.5 of the 3 eRFIs.

“the products are varied and are based off different technologies, designs and uses”, and that *“while most [Tier 2] suppliers ... can supply both seat heat mats and seat ventilation, having a knowledge of one market does not automatically give the ability to enter the other [and in] addition, there is also no demand-side substitution”*.²¹

- (22) In light of the above information, the Commission considers it likely that the manufacturing and supply of seat thermal solutions is a distinct market that can be further segmented between seat thermal heat mats and seat ventilation systems, but for which there is no need to segment, in addition, according to different vehicle types.
- (23) In any event, for the purposes of this Decision, it can be left open, first, whether the manufacturing and supply of seat thermal solutions is a separate market from (i) a wider market for the production and supply of seat components or (ii) a wider market that would also encompass HVAC systems, or, second, whether the market for the manufacturing and supply of seat thermal solutions should be sub-segmented, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement even under the narrowest plausible market definition, i.e., the separate markets for seat thermal heat mats and seat ventilation systems.

4.1.1.2. Seat sensors

- (24) The sensors produced by the Target are used to recognise seat occupancy and trigger the warning signal to fasten a seat belt, and can therefore be classified as pressure sensors.
- (25) The Commission has in the past discussed, but ultimately left open, whether there is a separate product market for the production and supply of sensors used in cars, and, if so, whether it should be further sub-segmented by functionality, e.g. position sensors, temperature sensors, pressure sensors, level sensors, speed sensors, and accelerometers.²²
- (26) The Notifying Party submits that the sensors produced by the Target are developed and produced specifically for car seats. Given that other types of sensors cannot replace the sensors in car seats, the Notifying Party considers that they belong to a separate product market for pressure sensors used in car seats.²³
- (27) The Commission notes that the vast majority of respondents to the market investigation agree that production and supply of sensors used in cars constitutes a distinct product market.²⁴ One respondent noted that *“seat sensors are part of a distinct product market, for at least the reasons that the products are not substitutes for each other or any other sensors”*,²⁵ which was confirmed by another respondent stating that *“sensors have uses that differ from the use of other*

²¹ Non-confidential version of the responses to question B.B.6 of the eRFIs to OEMs and Tier 1 suppliers.

²² Cases M.7585 NXP Semiconductors / Freescale Semiconductors, para. 94; M.5244 ZF / Cherry, para. 12; M.1053 Mannesmann / Philips.

²³ Form CO, paragraph 171.

²⁴ Non-confidential version of the responses to question B.C.1 of eRFI to Tier 1 suppliers, question B.C.1 of eRFI to OEMs and question B.C.1 of eRFI to Tier 2 suppliers.

²⁵ Non-confidential version of the responses to question B.C.2 of eRFI to Tier 2 suppliers.

*components for vehicles. They are not interchangeable.”*²⁶ It was further emphasised by one of the respondents that *“some of these products are mandated by safety regulations (e.g., occupant detection, seat belt reminders, etc.)”*.²⁷

- (28) In addition, respondents to the market investigation noted that *“the suppliers of seat thermal heat mats and seat pressure sensors also are not identical”*²⁸ and that *“the supply base providing these products [seat sensors] to customers is generally different than that of other products”*.²⁹
- (29) The majority of respondents to the market investigation agreed that the production and supply of sensors used in cars should be further segmented by functionality and that there is a separate product market for pressure sensors used in cars,³⁰ with one respondent noting that *“the functional, regulatory and competitive requirements vary across the different types of sensors”*.³¹
- (30) A majority of respondents who expressed a view considered the production and supply of pressure sensors used in car seats to be a distinct market, separate from the market for the production and supply of other pressure sensors used in cars.³² Participants explained that *“seat detecting sensors are specific only for seats and can not be used in other applications”*³³ and that *“seat pressure sensors are not interchangeable with other types of pressure sensors, such as tyre pressure sensors”*³⁴ because *“[s]eat pressure sensors in seats measure the change in pressure due to the weight of the passenger. Tyre pressure sensors measure the air pressure directly. Both types of pressure sensors cannot be substituted due to their different measuring principles”*.³⁵
- (31) In light of the above information, the Commission considers it likely that production and supply of sensors used in cars constitutes a distinct product market and that there is a sub-segment for pressure sensors used in car seats.
- (32) In any event, for the purposes of this Decision, it can be left open whether the production and supply of pressure sensors used in car seats is a separate market from wider markets for the production and supply of sensors or sensors used in cars as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement even under the narrowest plausible market definition, , i.e., the market for pressure sensors used in car seats.

4.1.2. *JIT assembly of complete car seats*

- (33) As outlined in recital (10), the JIT assembly of complete car seats is done by OEMs or Tier 1 suppliers who assemble the different components in or close to the car factory of the OEM. It involves the delivery of complete car seats on very short notice directly to the OEM’s production line to be immediately installed in a car.

²⁶ Non-confidential version of the responses to question B.C.2 of eRFI to Tier 1 suppliers.
²⁷ Non-confidential version of the responses to question B.C.2 of eRFI to Tier 2 suppliers.
²⁸ Non-confidential version of the responses to question B.C.2 of eRFI to Tier 1 suppliers.
²⁹ Non-confidential version of the responses to question B.C.2 of eRFI to Tier 2 suppliers.
³⁰ Non-confidential version of the responses to question B.C.3 of the 3 eRFIs.
³¹ Non-confidential version of the responses to question B.C.4 of eRFI to Tier 2 suppliers.
³² Non-confidential version of the responses to question B.C.5 of the 3 eRFIs.
³³ Non-confidential version of the responses to question B.C.6 of eRFI to OEMs.
³⁴ Non-confidential version of the responses to question B.C.6 of eRFI to Tier 1 suppliers.
³⁵ Non-confidential version of the responses to question B.C.6 of eRFI to Tier 1 suppliers.

- (34) In past decisions in the automotive sector the Commission has discussed a potential market for the JIT assembly of complete car seats, but ultimately left open whether the JIT assembly of complete car seats on the one hand, and the manufacturing of its individual components on the other hand, constitute different relevant product markets.³⁶
- (35) The Notifying Party considers the JIT assembly of complete car seats to be a separate product market, for the following reasons:³⁷
- (a) When purchasing seats that are to be installed in cars, as OEMs generally do not only purchase the seats, but also the JIT delivery, they run separate tender procedures for the assembly and JIT supply of complete car seats on the one hand and for individual components on the other hand;
 - (b) The JIT assembly of complete car seats should also be differentiated from the production and supply of individual seat components, as JIT suppliers typically assemble the seats in proximity to the OEM's car production plants using components that they either source from third parties (often selected directly by the OEMs, i.e. "directed purchases") or their own Tier 2 facilities located elsewhere;
 - (c) The requirement to deliver large volumes at short notice (usually within less than 14 hours), in turn requires specific know-how in logistics and supply chain management, as well as investments by the seat manufacturer to ensure the timely flow of supply;
 - (d) Further segmentation into first row, second row and additional rows is neither necessary nor appropriate, since all main suppliers of complete car seats are able to assemble all seat rows due to the required know-how being similar.
- (36) The Commission notes that most respondents to the market investigation support the view that the JIT assembly of complete car seats is a separate product market from the production and supply of individual seat components.³⁸ Respondents noted that "*a company that supplies all individual components separately will need specific knowledge of the seat design, the integration of seating components as well as the seat assembly requirements and techniques in order to also provide JIT assemblies of complete seats*" and that "*[c]ar seats are complex products. JIT assembly of car seats is an intricate process that requires a high level of precision and careful timing of all parties involved in the assembly. The manufacturing of the individual components, albeit complex in itself, requires a different set of skills. It is by no means interchangeable with the JIT assembly of car seats*".³⁹
- (37) Furthermore, most respondents to the market investigation support the view that the JIT assembly of complete car seats should not be segmented by type of vehicle.⁴⁰ Respondents noted that the "*core assembly process is similar*" and that

³⁶ Cases M.10512 Lear Corporation / Interior Comfort Systems Business of Kongsberg Automotive Group; M.8405 Lear / Grupo Antolin Assets; M.6136 JCI / Automotive Business of Keiper Recaro Group.

³⁷ Form CO, paragraphs 226.

³⁸ Non-confidential version of the responses to question B.A.1 in eRFIs to OEMs, Tier 1 suppliers and Tier 2 suppliers.

³⁹ Non-confidential version of the responses to question B.A.1 in eRFIs to OEMs and Tier 1 suppliers.

⁴⁰ Non-confidential version of the responses to question B.A.3 in eRFI to Tier 2 suppliers and question B.A.5 in eRFIs to OEMs and to Tier 1 suppliers.

the “size of a seat and content might change depending on vehicle type but the process to assemble seats is the same”.⁴¹

- (38) In light of the above information, the Commission considers it likely that the JIT assembly of complete car seats is a distinct market.
- (39) In any event, for the purposes of this Decision, the exact product market definition may be left open as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement even under the narrowest plausible product market definition, i.e. the JIT assembly of complete car seats.

4.2. Geographic market definitions

4.2.1. Seat components

4.2.1.1. Seat thermal solutions

- (40) In past decisions the Commission has considered the markets for automotive components, including for car seat components as well as for HVAC systems, to be at least EEA-wide if not broader.⁴²
- (41) The Notifying Party considers that the relevant geographic market is global.⁴³ In support of this view, in relation to seat thermal solutions (and also seat sensors), it submits that:⁴⁴
- (a) Components can be shipped across long distances, transport costs or logistics do not constitute a barrier, they are shipped in bulk and stored easily and efficiently in warehouses that manufacturers can easily build all over the world;
 - (b) OEMs do not require these components to be produced near the OEM / Tier 1 manufacturing sites and tenders are increasingly organised on a global basis (with an increasing participation of Asian suppliers);
 - (c) Most of the Target’s products contain relatively mature technology and they are relatively simple, low-tech products that conform to global standards without significant quality differences between suppliers.
- (42) Specifically in relation to seat thermal heat mats, the Notifying Party submits that at least 69 percent of that product that are sold in the EEA are imported from outside the EEA, claiming that this indicates that EEA heat mat suppliers are constrained by imports, and therefore an EEA wide market would be too narrow.⁴⁵
- (43) In relation to automotive components in general, the responses to the market investigation do not suggest the Commission should depart from its previous decisional practice of considering the geographic scope to be at least EEA-wide if not broader. For example, in relation to seat ventilation systems, one Tier 2 respondent stated that “*sourcing of our seat ventilation ... components is generally*

⁴¹ Non-confidential version of the responses to question B.A.4 in eRFI to OEMs.

⁴² Cases M.10232 Brose / Sitech; M.6136 JCI / Automotive Business of Keiper Recaro Group; M.7564 Mahle Behr / Delphi Thermal Systems Business.

⁴³ Form CO, paragraph 181.

⁴⁴ Form CO, paragraphs 182-186.

⁴⁵ Form CO, paragraph 200.

regional because the OEMs operate regionally”, where “regionally” refers to global regions such as North America, Asia, Europe etc.⁴⁶

- (44) Specifically in relation to seat thermal heat mats, the majority of respondents to the market investigation confirm that they are not bulky products and that large quantities can be shipped in a single container, the transport costs are low, and that they can be stored easily and efficiently in standard warehouses as they do not require specific cooling/heating conditions.⁴⁷
- (45) Most of the respondents to the market investigation state that for vehicles produced in the EEA the seat thermal heat mats are produced in the EEA, with a non-negligible number of respondents overall, and a majority of Tier 2 suppliers (who are the producers of seat thermal heat mats), stating they are produced in a country neighbouring the EEA (e.g. Serbia, North Macedonia, Turkey etc.) or in another region of the world, and only a small minority overall stating that the seat thermal heat mats are produced in the same country or a neighbouring country to where the JIT assembly plant is located.⁴⁸
- (46) In addition, a majority of OEMs stated that they have considered, or would consider for programmes for supplying components for a specific make and model of car starting in the next 5 years, sourcing seat thermal heat mats from a supplier whose production plant is in another part of the world (e.g. Asia).⁴⁹
- (47) The Commission considers, based on the above information, that the geographic market for seat thermal solutions in general, and for both seat thermal heat mats and seat ventilation systems, is at least EEA-wide and that it could be broader (where a broader scope could comprise the EEA and neighbouring countries (such as Serbia, North Macedonia, and Turkey) or indeed comprise other global regions (such as Asia)).
- (48) In any event, for the purposes of this Decision, the precise geographic scope of the market may be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement regardless of the geographic market definition adopted. The Commission will analyse the impact of the proposed Transaction on the narrowest plausible markets, i.e. separately for seat thermal heat mats in the EEA and for seat ventilation systems in the EEA.

4.2.1.2. Seat sensors

- (49) In past decisions the Commission has considered the markets for the various possible segments for sensors to likely be global in scope, but it left open the precise scope of the geographic market.⁵⁰
- (50) The Notifying Party submits that the geographic market for seat sensors is global, for the same reasons as those outlined in recital (41) for seat thermal solutions. In relation to the pressure sensors for car seats produced by the Target in its plant in

⁴⁶ Non-confidential version of the responses to question C.B.3 in eRFI to Tier 2 suppliers.

⁴⁷ Non-confidential version of the responses to questions D.18 in the eRFI to OEMs, D.19 in the eRFI to Tier 1 suppliers and D.8 in the eRFI to Tier 2 suppliers.

⁴⁸ Non-confidential version of the responses to question C.B.1 in the 3 eRFIs.

⁴⁹ Non-confidential version of the responses to question C.B.2 in the eRFI to OEMs.

⁵⁰ Case M.7585 NXP Semiconductors / Freescale Semiconductors, para. 99.

Serbia, the Notifying Party submits that the Target supplies customers around the globe, with around [...] % being supplied to China, [...] % to South Korea and [...] % to India and the remaining [...] % being supplied to customers in Europe (including Turkey).⁵¹

- (51) Responses to the market investigation do not suggest the Commission should depart from its previous decisional practice of considering the geographic scope of the market for sensors to be global, with respondents confirming that some of the main suppliers of sensors used in car seats are active globally.⁵² Most of the respondents to the market investigation state that for vehicles produced in the EEA the seat sensors are produced in the EEA, with a non-negligible number of respondents stating they are produced in another region of the world, and only a small minority stating that the seat sensors are produced in the same country or a neighbouring country to where the OEM or JIT assembly plant is located.⁵³
- (52) In light of the above information, the Commission considers that the geographic scope of the market for sensors used in cars is at least EEA-wide and could be global.
- (53) In any event, for the purposes of this Decision, the precise geographic scope of the market may be left open since the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement regardless of the geographic market definition adopted. The Commission will analyse the impact of the proposed Transaction on the narrowest plausible market, i.e. the market for pressure sensors for car seats in the EEA.

4.2.2. *JIT assembly of complete car seats*

- (54) In past decisions the Commission has considered the geographic scope of the market for the JIT assembly of complete car seats to be at least EEA-wide⁵⁴, while leaving this question open in other decisions.⁵⁵
- (55) The Notifying Party considers that the relevant geographical market is at least EEA-wide.⁵⁶ In support of this view, it states:
- (a) Competition for the award of contracts takes place in EEA-wide bidding or tender procedures;
 - (b) Any new suppliers that need to invest in a production site near the OEM customer can do so given the long lead times between the award of a contract and the start of production (two to four years), and they will typically recoup those costs during the initial contract period given the long duration of the contracts (typically between four to six years and longer should the programs be extended);

⁵¹ Form CO, Table 27 'Breakdown of Target's Sensor Sales by Region'.

⁵² Non-confidential version of the responses to question D.1 in the 3 eRFIs.

⁵³ Non-confidential version of the responses to question C.C.1 of the 3 eRFIs.

⁵⁴ Cases M.10232 Brose / Sitech; M.6136 JCI / Automotive Business of Keiper Recaro Group; M.7564 Mahle Behr / Delphi Thermal Systems Business.

⁵⁵ Cases M.8405 Lear / Grupo Antolin Assets; Case M.5930 JCI / Michel Thierry Group; M.10512 Lear Corporation / Interior Comfort Systems Business of Kongsberg Automotive Group.

⁵⁶ Form CO, paragraph 223.

- (c) Manufacturers that already have production sites close to the relevant OEM manufacturing plants may and do lose JIT seat assembly contracts to competitors without an established production site in proximity.
- (56) Responses to the market investigation do not suggest the Commission should depart from its previous decisional practice of considering the geographic scope of the market for the JIT assembly of complete car seats to be at least EEA-wide, with respondents confirming that, while the main suppliers of JIT assembly of complete car seats are active globally, the vast majority of production plants for JIT assembly of complete car seats that supply OEM's plants in the EEA are located in the EEA, with most located close to the OEM's plants.⁵⁷
- (57) In addition, two OEMs confirmed that, in general, they organise their tenders for the JIT assembly of complete car seats on the basis of different regions of the world (i.e. Europe, North America, Asia), although one of those OEMs also said that exceptionally they sometimes issue requests for quotations on a global basis and in rare cases they award the contract on a global basis.⁵⁸
- (58) In light of the above information, the Commission considers that the geographic scope of the market for the JIT assembly of complete car seats is at least EEA-wide.
- (59) In any event, for the purposes of this Decision, the precise geographic scope of the market may be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement regardless of the geographic market definition adopted. The Commission will analyse the impact of the Transaction on the narrowest plausible market, i.e. the market for the JIT assembly of complete car seats in the EEA.

5. COMPETITIVE ASSESSMENT

5.1. Affected markets

- (60) As a result of the Parties' activities, as outlined in recitals (9) – (10), and their market shares in the relevant markets, the Transaction would lead to a horizontally affected market for seat thermal heat solutions (and in particular the segment for seat thermal heat mats). As the Parties' combined shares are higher for seat thermal heat mats than for the wider market for seat thermal solutions, and because the Parties' combined shares for seat ventilation systems are below the threshold to be considered an affected market,⁵⁹ the Commission presents its competitive assessment, as regards seat thermal solutions, only in relation to seat thermal heat mats, i.e. the narrowest plausible affected product market.
- (61) There are also vertically affected markets for seat thermal heat solutions (and more specifically the segments for seat thermal heat mats and for seat vents) and seat sensors upstream, and the JIT assembly of complete car seats downstream.

⁵⁷ Non-confidential version of the responses to question C.A.1 in eRFIs to OEMs and Tier 1 suppliers and question D.1 in eRFI to OEMs.

⁵⁸ Cf. Non-confidential versions of Minutes of calls with OEMs on 24 October and 2 December 2022.

⁵⁹ The Parties' combined market share in seat ventilation systems was [10-20]% in 2022, with the Target having a market share of only [0-5]% in 2022 (and no sales in 2021).

5.2. Horizontal non-coordinated effects in the market for seat thermal heat mats

5.2.1. Analytical framework

- (62) The legal test for the assessment of horizontal effects of a merger is set out in the Merger Regulation and in the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines').⁶⁰
- (63) With regard to non-coordinated effects, “[a] merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power.”⁶¹ To assess whether the merger could result in non-coordinated effects, the Commission considers several factors identified in the Horizontal Merger Guidelines, such as the Parties’ market shares, whether the Parties are close competitors, whether customers have the ability to switch suppliers or to promote entry, or the fact that the merger would eliminate an important competitive force.

5.2.2. Market shares

- (64) As noted in the Horizontal Merger Guidelines, “[m]arket shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors.”⁶² In its practice, the Commission typically “uses current market shares in its competitive analysis.”⁶³ However, “current market shares may be adjusted to reflect reasonably certain future changes, for instance in the light of exit, entry or expansion.”⁶⁴ Further, depending on the nature of the market in question, the Commission can consider complementary factors to provide additional insight into the merging parties’ combined market share (e.g., historical shares, shares aggregated over longer reference periods,⁶⁵ capacity⁶⁶).

The Notifying Party’s views

- (65) The Notifying Party submits that the market shares that would typically be used by the Commission “may be an unreliable proxy for the competitive strength of the players in the market”⁶⁷ because of the characteristics of the market for the supply of car seat thermal heat mats.
- (66) First, the Notifying Party asserts that the Commission should consider that current sales in volume or value reflect competitive tenders that occurred in an often distant past and, therefore, do not appropriately reflect existing competitive dynamics. This is because of two distinctive features in the supply of components to OEMs. In the first place, OEMs typically only tender once for the supply of components for a specific make and model of car (a “programme”) and keep the same suppliers across the period in which this car is in production (i.e., “car seat

⁶⁰ OJ C 31, 05.02.

⁶¹ Horizontal Merger Guidelines, paragraph 24.

⁶² Horizontal Merger Guidelines, paragraph 14.

⁶³ Horizontal Merger Guidelines, paragraph 15.

⁶⁴ Horizontal Merger Guidelines, paragraph 15.

⁶⁵ See M.7278 General Electric/Alstom, paragraphs 420-422; M.8677 Siemens/Alstom, paragraph 141.

⁶⁶ See case M.8674 BASF / Solvay’s Polyamide Business, paragraph 455(b).

⁶⁷ Form CO, paragraph 235.

components are supplied through long-term contracts”⁶⁸). In the second place, there is typically a period of time that lapses between (i) the award to a supplier of a contract for the supply of components, and (ii) the initial deliveries of said components (the period between the award of a contract and start of deliveries is generally two years).

- (67) In the Notifying Party’s view, assessing current market shares without considering these specific features in the supply of components to OEMs would risk concealing “*emerging new trends,*” such as recent entry or a change in the nature of demand (e.g., a switch from EEA-based to global supply chains) and, as a result, understating their importance in the competitive dynamics.⁶⁹ To solve this issue, the Notifying Party asserts that “[a]n appropriate estimation of market shares should therefore exclude legacy sales and rely only on sales from the most recent contracts” where excluding “legacy sales” means basing the assessment on the sales “*in relation to vehicle programs that started in the past two years.*”⁷⁰
- (68) Second, the Notifying Party claims that “*market shares in bidding markets may be an unreliable proxy for the competitive strength of the players in the market*”⁷¹ as, in this type of markets, what is essential is the “*existence of a sufficient number of credible candidate bidders.*”⁷² In the Notifying Party’s view, market shares are unreliable because (i) of the long duration of contracts, (ii) contracts are typically awarded to a single supplier, (iii) the value of each contract is significant for a supplier, and (iv) these tenders happen infrequently.
- (69) As a result of these characteristics, the Notifying Party contends that seat thermal heat mat suppliers are compelled to “*compete vigorously to secure these volumes, i.e., business, for several years.*”⁷³ Therefore, in the Notifying Party’s view, because market shares only provide “*a snapshot of the outcome of competitive interactions at a certain point in time,*” they cannot “*reflect the competitive pressure exerted by existing competitors, who even if they have a small market share in one year, could win large tenders in the next year, and thus obtain a larger market share.*”⁷⁴

The Commission’s assessment

- (70) As noted in recital (64) above, market shares provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors. It is the Commission’s practice to choose the particular measures of market shares depending on the specific circumstances of the case, as different market share measures have different advantages and shortcomings in indicating market power.
- (71) The Commission confirmed certain of the Notifying Party’s claims regarding the characteristics of the seat thermal heat mats market: (i) it is a bidding market, (ii) with varying sales volumes awarded in each contract, (iii) in which typically a single seat thermal heat mat supplier is designated for each programme, (iv) that

⁶⁸ Form CO, paragraph 87.
⁶⁹ Form CO, paragraph 91.
⁷⁰ Form CO, paragraph 94.
⁷¹ Form CO, paragraph 235.
⁷² *Ibid.*
⁷³ Form CO, paragraph 102.
⁷⁴ Form CO, paragraph 122.

typically programmes have long durations,⁷⁵ and (v) that there is generally a at least a period of two years between a supplier being awarded a contract and its initial sales.

(72) However, the Commission does not share the Notifying Party’s view that market shares are an unreliable proxy of the competitive strength of the Parties. This is because, in bidding markets, the fact that a company maintains its market share over consecutive years, despite rivals having had successive bidding opportunities during that period, is an indication of market strength. Further, the Commission considers that tenders for the supply of seat thermal heat mats are sufficiently frequent⁷⁶ for tenders in a given year to be representative of the overall competitive landscape.

(73) In the present case, as per the Commission’s practice in bidding markets, the Commission considered the Parties’ market shares in a wide time horizon, from 2018 to 2025. Because contracts are awarded for long durations and to a single supplier, the market is characterised by relatively “lumpy” sales. Because of the significance of imports into the EEA (as noted in recital (42) above), the Commission also considers informative the Parties’ combined worldwide market share. All these market shares are set out in Tables 1-4 below:

Table 1 – Historical EEA Sales of Thermal Heat Mats (in volume)⁷⁷

Component supplier	2018		2019		2020		2021	
	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share
Lear	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Target	[...]	[30-40]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Combined	[...]	[60-70]%	[...]	[60-70]%	[...]	[60-70]%	[...]	[50-60]%
Gentherm	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Kwangjin	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Panasonic	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Kurabe	[...]	[...]	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others/ Unknown	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 20 (based on modified IHS data)⁷⁸

⁷⁵ IHS, a third-party market information services provider that provides industry reports on sales of car seat thermal heat mats, tracks the duration of supply relationships per contract (i.e., per “programme”). According to IHS, the median duration of a programme in the EEA is 7.8 years (Form CO, Table 4).

⁷⁶ E.g., the Target’s bidding data in Annex 10.3 indicates that it participated in [...] tenders in 2021. By way of comparison, the Commission considered tenders to be infrequent in case M.8677 Siemens/Alstom when, in a period of 10 years, the Parties had participated in 19 tenders.

⁷⁷ The market shares provided by the Notifying Party in the Form CO are based on IHS Markit data. As regards value figures, the Notifying Party submits that the available IHS Markit data is limited and only high-level, thereby not allowing a value-based breakdown on a component-by-component basis (Form CO, paragraph 242).

Table 2 – Forward-looking EEA Sales of Thermal Heat Mats (in volume)⁷⁹

Component supplier	2022 ⁸⁰		2023		2024		2025	
	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share
Lear	[...]	[30-40]%	[...]	[30-40]%	[...]	[20-30]%	[...]	[20-30]%
Target	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[50-60]%	[...]	[50-60]%	[...]	[40-50]%	[...]	[40-50]%
Gentherm	[...]	[20-30]%	[...]	[20-30]%	[...]	[30-40]%	[...]	[30-40]%
Kwangjin	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Panasonic	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Kurabe	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others/ Unknown	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%	[...]	[10-20]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 20 (based on modified IHS data)

Table 3 – Global Sales of Thermal Heat Mats (in volume)

Component supplier	2018		2019		2020		2021	
	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share
Lear	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Target	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Gentherm	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Kwangjin	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Panasonic	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%	[...]	[5-10]%
Kurabe	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
AEW	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Guangzhou Sincer	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Changchun Quark Po-best	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Faurecia	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nitring	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]	[...]	[0-5]%
ITW	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%

⁷⁸ The Notifying Party reviewed and modified the data in the IHS dataset, reallocating sales volumes inaccurately attributed to the Parties.

⁷⁹ Forward-looking volumes are based on tenders that have already been awarded by OEMs and Tier 1 suppliers.

⁸⁰ IHS data for the period 2022-2025 is based on forecasts are based on programmes considered by IHS up to February 2022. Contrary to the data for the period between 2018-2021 for which the Notifying Party conducted a review of the underlying IHS data to reallocate sales volumes where necessary to reflect the market reality (Form CO, paragraph 239(a)), the Notifying Party notes in the Form CO that it could not verify the completeness and reliability of the 2022 data by the date of notification (Form CO, paragraph 264).

Component supplier	2018		2019		2020		2021	
	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share
Others/Unknown	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Table 36 (based on modified IHS data)

Table 4 – Global Sales of Thermal Heat Mats (in volume)

Component supplier	2022		2023		2024		2025	
	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share	Units (million)	% Share
Lear	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Target	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Gentherm	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Kwangjin	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%
Panasonic	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Kurabe	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
AEW	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Guangzhou Sincer	[...]	[5-10]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Changchan Quark Po-best	[...]	[5-10]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Faurecia	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Nitring	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
ITW	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others/Unknown	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

*

(74) For the sake of completeness, to assess the Notifying Party’s claims regarding the volatility of the market, the importance of recent entrants in winning business, the Commission includes in Table 5 and Table 6 below market shares relative to contracts recently won.

Table 5 – Proportion of EEA Sales of Thermal Heat Mats in Recent Contracts (excluding so-called “legacy sales,” in volume)

Component supplier	2018		2019		2020		2021	
	Units	% Share	Units	% Share	Units	% Share	Units	% Share
Lear	[...]	[30-40]%	[...]	[50-60]%	[...]	[30-40]%	[...]	[20-30]%
Target	[...]	[30-40]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[60-70]%	[...]	[60-70]%	[...]	[40-50]%	[...]	[40-50]%

* Should read: “Source: Form CO, Table 36 (based on modified IHS data)”.

Component supplier	2018		2019		2020		2021	
	Units	% Share	Units	% Share	Units	% Share	Units	% Share
Gentherm	[...]	[20-30]%	[...]	[10-20]%	[...]	[30-40]%	[...]	[30-40]%
Kwangjin	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[10-20]%
Panasonic	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[0-5]%
Kurabe	[...]	[...]	[...]	[0-5]%	[...]	[10-20]%	[...]	[0-5]%
Others/ Unknown	[...]	[...]	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 20 (based on modified IHS data)

Table 6 – Forward-looking Proportion of EEA Sales of Thermal Heat Mats in Recent Contracts (excluding so-called “legacy sales,” in volume)

Component supplier	2022		2023		2024		2025	
	Units	% Share	Units	% Share	Units	% Share	Units	% Share
Lear	[...]	[10-20]%	[...]	[5-10]%	[...]	[10-20]%	[...]	[20-30]%
Target	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[0-5]%
Combined	[...]	[40-50]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[20-30]%
Gentherm	[...]	[30-40]%	[...]	[40-50]%	[...]	[30-40]%	[...]	[30-40]%
Kwangjin	[...]	[10-20]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Panasonic	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Kurabe	[...]	[0-5]%	[...]	[...]	[...]	[0-5]%	[...]	[0-5]%
Others/ Unknown	[...]	[5-10]%	[...]	[5-10]%	[...]	[20-30]%	[...]	[30-40]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 20 (based on modified IHS data)

(75) It follows from the market share data in Table 1 and Table 2 that the proposed Transaction would reinforce the position of the largest supplier of seat thermal heat mats in the EEA (Lear), with a combined market share of [50-60]% in 2021 and of [50-60]% in 2022, as a result of the combination of the first and third largest suppliers. Further, as a result of the proposed Transaction, the market for the supply of seat thermal heat mats in the EEA would experience a significant increase in the concentration levels of a market that is already significantly concentrated pre-merger.⁸¹ During the proceedings, concerns were raised that the Transaction would in fact lead to a monopolistic position in the supply of seat thermal heat mats. Both the position and levels of the market shares in question suggest that both merging parties are important in the competitive process.

(76) However, in the Commission’s view, the Transaction does not lead to the creation of a monopolistic position. When looking at the wider time horizon in Table 1 and

⁸¹ As per paragraph 16 of the Horizontal Merger Guidelines, to measure the concentration levels in the supply of seat thermal heat mats, the Commission applied the Herfindahl-Hirschman index (“HHI”). The HHI associated with the EEA reveals a market that, pre-Transaction, has a concentrated structure: its HHI indicators are of [...] in 2021, and [...] in 2022 (considering all volumes sold, as per Table 1 and Table 2). The Transaction results in a significant increase in concentration levels, with a post-Transaction HHI of [...] in 2021, and HHI of [...] in 2022, corresponding to a Delta HHI of [...] in 2021, and Delta HHI of [...] in 2022.

Table 2, the Commission notes that there is an appreciable decline in the Parties' market shares. The Target has seen its market share decline from [30-40]% in 2018 to [20-30]% in 2021, and has an expected share of [10-20]% in 2024 and [10-20]% in 2025.⁸² Similarly, although stable in the period from 2018 to 2021, Lear's future market shares are expected to decline from [30-40]% in 2021 to [20-30]% in 2024 and [20-30]% in 2025. Such declines – for the Target to approximately half of its market share in a period of eight years, and for Lear by *circa* [5-10]% in a period of four years – suggest (i) that the Parties' rivals have a significant ability to win business from the Parties (as the decline happens concurrently for both), and (ii) that the Parties' success in recent tenders has been limited (as the Parties' future market shares continuously decrease year after year). This is confirmed by the data included in Table 5 and Table 6, showing the Parties' success in recent contracts to have decreased significantly from 2018 and 2019 (with [60-70]% and [60-70]%) to levels around [40-50]% between 2021 and 2023 (with [40-50]% in 2021 and [30-40]% in 2023), a decrease of [30-40]% in several consecutive years.

- (77) It follows from the above that, despite the Parties' high combined market shares and the market's levels of concentration, the anticipated decline in these shares suggests that the Parties may not have market power post-merger.

5.2.3. Closeness of competition

The Notifying Party's view

- (78) The Notifying Party submits that post-merger “*a sufficient number of credible alternatives to the Parties exist in the EEA.*”⁸³ Further, the Notifying Party adds that “*in bidding markets that involve low-tech, largely commoditized products, a low number of suppliers is sufficient to achieve a competitive outcome.*”⁸⁴ In addition, the Notifying Party asserts that “*there are at least 11 heat mat suppliers other than the Parties' available at the global level, many of which sell more heat mats globally than the Target (these are Gentherm, Kwangjin, AEW and Panasonic).*”⁸⁵ The Notifying Party acknowledges that it competed against Kurabe, AEW and Panasonic in a smaller proportion of tenders (e.g., as mentioned in the Target's bidding data, in [...]%, [...]%, and [...]%, of values tendered during the 2018-2021 period, respectively), but notes it is “*often not aware against which suppliers it is competing but understands that suppliers typically invite three to five suppliers to bid.*”⁸⁶ Finally, the Notifying Party states that the “*Target competed*

⁸² The Commission notes the decline in the Target's market share and estimated volume of sales in 2025, relative to preceding years (e.g., a decline in [0-5]% in market share, and [...]%, in unit sales from 2024 to 2025, as presented in Table 2). The Commission requested the Notifying Party to clarify the reasons underlying this decrease in sales. The Notifying Party stated that (i) such decline is consistent with its bidding data that shows that the number of tenders won with supplies starting in 2024/2025 is smaller than in previous years, and (ii) the decline in expected sales volumes is also a function of the larger proportion of sales expected from tenders that have not been completed (see Response to RFI 9). Because they are indicative of the trends witnessed in the market, the Commission therefore uses data from 2024 and 2025 (from Table 2) to consider forward-looking market shares based on volume, and data from 2023 (from Table 6) to consider forward-looking market shares based on recent contracts, as 2023 is not affected by incomplete tenders and is therefore a more conservative measure.

⁸³ Form CO, paragraph 330.

⁸⁴ *Ibid.*

⁸⁵ *Ibid* (emphasis removed).

⁸⁶ Form CO, paragraph 339.

against Gentherm most often and [information about Gentherm being a close competitor]”.⁸⁷

The Commission’s assessment

- (79) The Commission examined the Parties’ bidding data over a period of four years (2018-2022), i.e., data collected by the Parties in relation to tenders for the supply of seat thermal heat mats in the EEA in which either participated.⁸⁸ Lear and the Target’s bidding data differ in their level of detail (e.g., in the number of tenders included) but generally present a similar picture of the competition faced by the Parties in that period. According to such data, (i) the two Parties were both present in a majority of the tenders included in the bidding data ([...] % according to Lear’s data, [...] % according to the Target’s data), (ii) the two Parties and Gentherm were simultaneously present in most tenders ([...] % according to Lear’s data, [...] % according to the Target’s data), (iii) most tenders included more than three suppliers ([...] % according to Lear’s data, [...] % according to the Target’s data), and (iv) only the Parties and Gentherm are recorded as winners in all of the tenders identified in the Parties’ bidding data.
- (80) The Parties’ bidding data differ with respect to the supplier with the most frequent wins.
- (a) In Lear’s data, Gentherm is the most successful tenderer (with [...] % of wins in tenders where a supplier was awarded a contract), with Lear presenting a success ratio of [...] % and the Target of [...] %. When assessing how often the Parties and Gentherm win against each other, (i) Gentherm won [...] % of tenders in which it participated against Lear, and [...] % of the tenders that included both the Target and Lear; (ii) Lear won [...] % of the tenders that included the Target, [...] % of the tenders where it competed against Gentherm, and [...] % of tenders that included both the Target and Gentherm; and (iii) the Target won [...] % of the tenders it participated against Lear, and [...] % of the tenders it participated against both Lear and Gentherm.
- (b) In the Target’s bidding data, the Target is the most successful tenderer (with [...] % of wins in tenders where a supplier was awarded a contract), with Lear presenting a success ratio of [...] %, and Gentherm of [...] %.⁸⁹ When assessing how often the Parties and Gentherm win against each other (i) the Target won [...] % of tenders in which it participated against Lear, [...] % of the tenders where it competed against Gentherm, and [...] % of the tenders that included both the Gentherm and Lear; (ii) Lear won [...] % of the tenders that included the Target, [...] % of tenders that included both the Target and Gentherm; and (iii) Gentherm won [...] % of the tenders it participated against the Target, and [...] % of the tenders it participated against both Lear and the Target.

⁸⁷ *Ibid.*

⁸⁸ The Notifying Party notes that neither of the Parties systematically track bidding data in the ordinary course of business, and that the bidding data provided is based on each Party’s best recollection. The Notifying Party notes that it reconciled the bidding data available to each Party to provide as comprehensive a view as possible of tenders for seat thermal heat mats, but its method to compile the bidding data is skewed towards tenders won by either Party and the data is incomplete (cf., footnote 129, and paragraph 342).

⁸⁹ In 21% of tenders identified by the Target as having been completed, the Parties were unable to identify the winner of the tender.

- (81) In either case, both Parties' bidding data show that the Parties exert a competitive constraint on each other.
- (82) The Commission notes that certain aspects included in the Parties' bidding data suggest, however, that the competitive constraints that Lear will be subject to post-Transaction are not limited to the competition exerted by the Target (or Gentherm).
- (83) In the first place, the Commission notes that the Parties' bidding data is incomplete as it does not record contracts won by Kwangjin and Kurabe, which currently have sales in the EEA. Similarly, for a significant share of the tenders included in both Parties' bidding data that are considered to have been completed, no specific winner is indicated:⁹⁰ in [...] % of the tenders included in Lear's bidding data, no specific winner is indicated; and in [...] % of the tenders included in Target's bidding data no specific winner is indicated. In other words, without putting in question the usefulness and accuracy of the Parties' bidding data, it is also clear that such data do not provide a complete picture of the competitive processes that occurred between 2018 and 2022.
- (84) In the second place, both of the Parties' bidding data show that suppliers such as Kurabe and AEW have increased significantly their participation in tenders: neither participated in any of the tenders recorded by the Parties in 2018. Conversely, in 2021, both Kurabe and AEW participated in [...] % of tenders according to Lear's bidding data, and, in 2022, in [...] % of tenders (AEW participated in [...] % of tenders in 2022 in which Lear participated). According to the Target's bidding data, in 2021 either Kurabe or AEW participated in [...] % of tenders, and, in 2022, AEW participated in [...] % of tenders. In the Commission's view, this means that – contrary to certain concerns raised during the proceedings – Kurabe and AEW are considered as suitable potential suppliers by a wide array of OEMs or Tier 1s organising the tenders who considered both companies in consecutive tenders since 2021. This is because, as discussed recitals (103)-(104) below, to participate in tenders, seat thermal heat mat suppliers have to go through a qualification procedure with those Tier 1s and OEMs to verify their compliance with each Tier 1 or OEM selection criteria. Once such qualification is achieved, Tier 1s and OEMs typically create a list of potential bidders they will subsequently invite to their tenders.⁹¹ Their repeated presence indicates that OEMs generally view Kurabe and AEW as potential suppliers to any contracts and, therefore, the fact that they are not currently significant suppliers in the EEA is not detrimental to their participation in the competitive processes.
- (85) In the third place, the Parties' bidding data indicates that Tier 1 suppliers and OEMs typically invite several seat thermal heat mat suppliers to each tender. The Commission confirmed that this is a common procedure among Tier 1 suppliers and OEMs. For example, an OEM stated that it *“usually sends to approx. 8 suppliers the requests for quotations and has 4/5 nominated suppliers (being awarded programmes).”*⁹² Another OEM indicated that it *“strives to invite at least four Tier2 suppliers in tenders for its products”*⁹³ and that *“once a supplier is included in the bidders list it will have the opportunity to participate in*

⁹⁰ The “winner” in such tenders is referred to as “unknown.”

⁹¹ Cf. Minutes of the meeting with an OEM of 7 February 2023, paragraph 10.

⁹² Cf. Minutes of the meeting with an OEM of 20 January 2023, paragraph 14.

⁹³ Cf. Minutes of the meeting with an OEM of 7 February 2023, paragraph 9.

[subsequent] tenders.”⁹⁴ In the Commission’s view, as discussed in recital (115) below, this indicates that OEMs search and promote actively the participation of additional suppliers – such as Kurabe and AEW – to instil competition in their supply chains. By adding suppliers such as Kurabe and AEW to their lists of potential suppliers, seat thermal heat mat customers signal to these and to incumbent suppliers their willingness to award contracts to new participants in their tenders.

- (86) In the fourth place, the market investigation confirmed (i) the importance of Gentherm in the competitive process – ranked as the most important supplier by the majority of OEMs that direct the purchases of seat thermal heat mats, (ii) the comparatively weak position of the Target in OEM’s responses, and (iii) that the strongest competitor to either of the Parties is Gentherm (only one respondent indicated that Lear and the Target are its main suppliers).⁹⁵
- (87) In sum, according to Lear’s bidding data, [Information about Gentherm being a significant competitor]; and according to the Target’s bidding data, [Information about Gentherm and Lear being close competitors]. The Parties’ bidding data show that Gentherm is a significant competitor, which was confirmed in the results of the market investigation. However, the results of the market investigation gave a conflicting view on the importance of the Target, relative to the Target’s own bidding data. Finally, the Parties’ bidding data indicate that suppliers such as AEW and Kurabe participate regularly in tenders. However, because according to the Parties’ bidding data such suppliers do not have contracts awarded in the EEA, such data does not provide a conclusive view on the degree of competitive constraint these suppliers already exert through their participation in the tenders. Therefore, to determine the competitive constraint that suppliers such as Gentherm, AEW and Kurabe will be able to exert post-Transaction, it is necessary to consider additional factors such as customer’s ability and willingness to switch, and the ability of such suppliers to enter or expand their presence in the EEA.

5.2.4. Customers’ ability to switch suppliers

The Notifying Party’s view

- (88) The Notifying Party asserts that seat thermal heat mat customers can switch easily between suppliers, because there are available alternatives and there are no or only minimal switching costs. In the Notifying Party’s view, “*the seat thermal heat mat market is dynamic and contestable.*”⁹⁶ To substantiate this view, the Notifying Party notes that (i) “*OEMs and Tier 1 suppliers organize formal tender / bidding procedures in which the component producers have to bid against each other, so that even a low number of suppliers is sufficient to achieve a competitive outcome,*”⁹⁷ and (ii) there is significant evidence of customers switching, as reflected by fluctuation in the market shares in Table 2, which indicate that “*a supplier’s market position is contestable.*”⁹⁸

⁹⁴ *Ibid*, paragraph 10.

⁹⁵ Non-confidential version of the responses to question D.1 in the eRFIs to OEMs and Tier 1 suppliers.

⁹⁶ Form CO, paragraph 318.

⁹⁷ Form CO, paragraph 317.

⁹⁸ Form CO, paragraphs 324(a)-(b).

- (89) According to the Notifying Party, customers can switch, and supply is easily contestable, because of the characteristics of supply of seat thermal heat mats, namely (i) contracts are awarded to a single supplier, for long periods of time, such that when a programme ends and a new one begins, a new “winner-take-all” tender occurs, and (ii) seat thermal heat mats are “*low technology products, considered as a commodity, and almost all competitors can provide heat mats of a similar quality and price.*”⁹⁹ Finally, with regard to the supply that is under existing long-term contracts, although non-contestable, the terms are fixed for the duration of the contracts and, therefore, post-Transaction the Notifying Party claims that it could not attempt to raise prices.

The Commission’s assessment

- (90) In the Commission’s view, customers have the ability to switch suppliers and do not face significant switching costs to do so. In the first place, customers’ ability to switch to new suppliers for new contracts is evidenced in the declining market shares of the Parties that are included in Table 1 and is anticipated to continue as indicated in Table 2. In the period of time covered – seven years, i.e., the duration of one single car programme – the decline in the success achieved by the Parties in the sales of seat thermal heat mats is visible.
- (91) This is confirmed in Table 5 and Table 6, that (i) show that a single supplier can win very different shares of recent contracts (e.g., the Target’s share in years in 2021 is [10-20]%, half of what it achieved in the years 2018 and 2023), and (ii) that there is no clear pattern of a diversion of shares throughout the period 2018-2025 (i.e., suppliers appear to be competing on the same footing for new contracts). The Commission therefore agrees with the Notifying Party’s claim that the market is dynamic, that the shares of recent contracts won are volatile, and that both indicate that customers have the ability to switch and do not face significant switching costs.
- (92) Further, a majority of customers and competitors confirmed during the market investigation that seat thermal heat mats are commodities that do not have regional specificities.¹⁰⁰ Because seat thermal heat mats are not differentiated products (or only to a limited extent) customers can substitute one supplier for another easily in new contracts, without incurring significant costs - for instance limited to the costs of qualifying a new supplier (which, in turn, explains the fluctuating market shares regarding recent contracts indicated in Table 5 and Table 6 above).
- (93) Finally, with regard to existing contracts, the Commission agrees with the Notifying Party that the merged entity will be prevented from raising prices for existing contracts because terms and conditions are typically set for the duration of the contract when the tender is awarded.¹⁰¹ In addition, because tenders happen with relative frequency,¹⁰² the risk of losing new contracts makes it unlikely for the merged entity to attempt to change the terms of existing contracts. The fact that no

⁹⁹ Form CO, paragraph 499.

¹⁰⁰ Non-confidential version of the responses to questions D.18-19 in the eRFI to OEMs, D.19-20 in the eRFI to Tier 1 suppliers, and to D.8-9 in the eRFI to Tier 2 suppliers. During the pre-notification investigation, the view that seat thermal heat mats are technically simple and non-differentiated products was shared widely by OEMs – e.g., minutes of a call with an OEM on 24 October 2022, paragraph 16.

¹⁰¹ Cf. Minutes of the meeting with a competitor of 13 October 2022, paragraph 8.

¹⁰² See footnote 76 above.

market participant referred to this possibility as a concern during its market investigation is also indicative that it is not a relevant concern.

- (94) In light of the results of the market investigation and of the evidence available to it, the Commission considers that OEMs and Tier 1 suppliers do not face significant barriers to switching to a new supplier. It is therefore necessary to ascertain whether, post-merger, there are sufficient suppliers available to Tier 1s and OEMs in the EEA to exert a competitive constraint on the merged entity, and/or whether the merged entity would be constrained post-merger by the possibility of entry.

5.2.5. *Barriers to entry and expansion*

The Notifying Party's views

- (95) In the Notifying Party's view, Tier 1s and OEMs have "*a sufficient number of credible alternatives to the Parties.*"¹⁰³ The Notifying Party claims that "*there are at least 11 heat mat suppliers other than the Parties' available at the global level,*"¹⁰⁴ and for that reason "*the (threat of) entry or expansion can be expected to prevent the merged firm from increasing price post-Transaction.*"¹⁰⁵ The Notifying Party notes that Gentherm, Kwangjin, Kurabe and AEW are viewed by customers as suitable alternatives, and that this will remain post-merger. Regarding Gentherm, Kwangjin and Kurabe, the Notifying Party notes that these rivals have won contracts recently for the supply of seat thermal heat mats in the EEA. With regard to AEW, the Notifying Party notes that it has set up a production plant in the EEA that is due to start production in 2023, and [information on future business strategy and supply source].¹⁰⁶ The Notifying Party notes that Kurabe's recent success, and AEW's setting up of a production plant, are evidence of their ability to supply in the EEA.
- (96) Further, the Notifying Party notes that, generally, the supply of seat thermal heat mats is characterised by no or limited barriers to entry or expansion. In the first place, because, irrespective of the precise geographic market definition, Tier 1s and OEMs work and are supplied with seat thermal heat mats produced outside of the EEA and can invite any such supplier to start supplying in the EEA.¹⁰⁷ In particular, the Notifying Party claims that the qualification procedures that suppliers have to go through before they are invited to tenders can be abridged if they are a current supplier in Asia or in North America.¹⁰⁸ In the second place, the Notifying Party claims that the time and cost involved in qualifying a supplier and/or a product to participate in a tender is not onerous, and can be achieved within the period that Tier 1 or OEM organises the tender.¹⁰⁹ In the third place, qualification processes and International Automotive Task Force ('IATF') certifications accord to international global standards,¹¹⁰ which facilitates entry. In the fourth place, the Notifying Party asserts that it is not necessary for a heat mat supplier to have a local production to supply EEA-based customers, as it is

¹⁰³ Form CO, paragraph 330 (emphasis removed).

¹⁰⁴ Ibid, (emphasis removed).

¹⁰⁵ Form CO, paragraph 332.

¹⁰⁶ Form CO, paragraph 109.

¹⁰⁷ Form CO, paragraph 114.

¹⁰⁸ Form CO, paragraph 116(a).

¹⁰⁹ Form CO, paragraphs 116(b), 118.

¹¹⁰ Form CO, paragraphs 117(a), 219.

sufficient to set up a warehouse in the EEA.¹¹¹ In the fourth place, the Notifying Party states that cost and duration of setting up a new plant, or of expanding the capacity of an existing plant, is low and can be amortised quickly by winning a given tender.¹¹² In the fifth place, the Notifying Party asserts that the technology incorporated in seat thermal heat mats is mature and widely available, such that there are no intellectual property hurdles to enter the market.¹¹³

The Commission's assessment

- (97) During the Commission's proceedings, two market participants raised concerns about (i) the ability, quality and/or the scale of AEW's entry in the market for seat thermal heat mats in the EEA,¹¹⁴ and (ii) about the feasibility of supplying in the EEA through warehouses (e.g., due to requirements imposed for supply chain management)¹¹⁵, which in turn raised concerns about relying on suppliers such as Kurabe for supplies in the EEA. The different claims were thoroughly investigated and the Commission considers that the evidence available does not confirm the concerns raised.
- (98) The Commission considers that barriers to entry and expansion are not a hurdle for existing and potential suppliers of seat thermal heat mats, that such suppliers can start supplying in the EEA with sufficient scale and in a timely manner, that it is likely that Tier 1s and OEMs would be able to expand their supplier bases, and for such new or potential suppliers to exert a competitive constraint on the Parties.
- (99) *First*, in the Commission's view, recent and current market dynamics show examples of entry and of significant expansion, and indicate that seat thermal heat mat customers are likely to readjust their supplier base post-merger. Gentherm was able to expand output to win significant business in a short period.¹¹⁶ Similarly, Kurabe entered in 2020 as a significant supplier to a leading OEM as its second largest supplier.¹¹⁷ In addition, AEW's decision to set up a production plant in Romania is also indicative of the ability to enter the market and to establish production capacity in a relatively short time frame and start competing in almost all tenders (as noted in recital (84)).
- (100) Also significant is the fact that, following Lear's acquisition of Kongsberg, rival Tier 1 suppliers decided to stop procuring from Lear/Kongsberg,¹¹⁸ which was taken as an opportunity by AEW and Kurabe to attempt to increase their sales to such Tier 1 rivals. As noted in recital (79), most tenders for seat thermal heat mat customers include three or more candidate suppliers. The increase in the participation rate of AEW and Kurabe in tenders noted in recital (84) is

¹¹¹ Form CO, paragraphs 120, 187-190, 196.

¹¹² Form CO, paragraphs 208, 213-216, 357-359.

¹¹³ Form CO, paragraph 524.

¹¹⁴ Non-confidential version of the presentation from a Tier 1 supplier for the meeting of 12 July 2022, and minutes of the meeting the same Tier 1 supplier of 2 February 2023, paragraph 4.

¹¹⁵ Cf. Minutes of the meeting with a Tier 1 supplier of 18 January 2023, paragraph 4.

¹¹⁶ E.g., as reflected in Table 1 and Table 2, Gentherm's share increased circa 10% in a period of five years (2020 to 2025), which represent considerable business in a short time span because of the weight of sales of tenders prior to 2020.

¹¹⁷ Non-confidential version of the response from an OEM to Question D.1. of the eRFI to OEMs. As noted in Table 5 above, Kurabe effectively entered in the EEA in 2020 by winning recent contracts that correspond to 10% of total volumes sold.

¹¹⁸ Form CO, paragraph 376.

contemporaneous with Lear’s acquisition of Kongsberg, therefore the Commission views it as an immediate response from customers to changes in the market.

- (101) The Commission considers that further changes can be expected following the Transaction, as a Tier 2 competitor noted that its “*decision to expand its current plant is due to [its] expectation that competitors such as Forvia and Adient will decrease its purchases from Kongsberg and IGB.*”¹¹⁹ Similarly, another Tier 2 competitor noted that “[s]ome customers which had no direct businesses and almost only purchased from our competitors and had no interest in our company recently contacted us and gave us the chance to have a business with them.”¹²⁰ AEW and Kurabe’s presence in the tenders discussed in recital (85) above also suggests that OEMs view them as suitable bidders, and this view was confirmed by certain OEMs during the Commission’s investigation.¹²¹ In other words, recent developments indicate that suppliers with previously marginal or no presence in the EEA have had the ability to enter, and expect to expand their capacity as a result of current competitive dynamics and of the proposed Transaction. a Tier 2 supplier’s commitment to invest in the expansion of its current production capabilities also allays any concerns that its capacity would be insufficient to meet demand in the short-term¹²² (and any longer-term concerns about expansion are addressed in recitals (105)-(109) below).
- (102) *Second*, the Commission notes that some Tier 1s and OEMs currently work with suppliers with production plants outside of the EEA and that – although it is not the prevalent model for seat thermal heat mats supplies in the EEA – Tier 1s and OEMs are generally willing to be (or continue being) supplied from outside the EEA. Kwangjin has been present in the EEA as a supplier to Hyundai and Kia, through the use of warehouses in the EEA, since 2007, with sales having increased since.¹²³ Kurabe, a significant OEM’s second largest supplier, is also present in the EEA through the use of warehouses.¹²⁴ Generally, a large majority of respondents to the market investigation agreed that seat thermal heat mats (i) can be shipped in containers, (ii) have generally low transport costs, and (iii) can be stored easily and efficiently in warehouses.¹²⁵ Further, the Commission considers that the fact that Tier 1s or OEMs work with different suppliers in Asia and North America increases their knowledge of non-EEA suppliers and their ability as seat thermal heat mat customers to facilitate entry.¹²⁶ For example, the majority of OEMs in the market investigation responded that a supplier qualified to supply in North America or Asia would not have re-qualify, or would only have to go through a more limited additional qualification procedure in order to be qualified to supply to the EEA, which facilitates entry.¹²⁷
- (103) *Third*, the Commission considers that the time and cost involved in qualifying a supplier and/or a product to participate in a tender for seat thermal heat mats is not

¹¹⁹ Cf. Minutes of the meeting with a competitor of 9 January 2023, paragraph 20.

¹²⁰ Cf. Non-confidential version of the response from a competitor to Question E.5 of the eRFI to Tier 2 suppliers.

¹²¹ Cf. Minutes of the meeting with an OEM of 2 December 2022, paragraph 12.

¹²² Cf. Minutes of a meeting with a Tier 2 supplier of 9 January 2023, paragraph 19.

¹²³ Cf. Minutes of the meeting with a competitor of 7 October 2022, paragraph 9.

¹²⁴ Cf. Minutes of the meeting with an OEM, paragraphs 9 and 10.

¹²⁵ Non-confidential version of the responses to question D.18 of the eRFI to OEMs, question D.19 of the eRFI to Tier 1 suppliers, and question D.8 of the eRFI to Tier 2 suppliers.

¹²⁶ Cf. Minutes of the meeting with an OEM of 21 October 2022, paragraph 11.

¹²⁷ Non-confidential version of the responses to question D.25 of the eRFI to OEMs.

particularly onerous or time consuming. This was confirmed in the market investigation: the costs incurred by OEMs for the qualification procedure are generally not considered as being particularly significant.¹²⁸ Tier 2 suppliers view the cost of qualification as significant,¹²⁹ but such costs are a minute proportion of the revenues that could be earned from the median or average contracts.¹³⁰ Regarding the duration of the qualification procedures for seat thermal heat mats, the majority of OEMs state that the qualification of a new seat thermal heat mat supplier can be achieved within one year.¹³¹

- (104) *Fourth*, the Commission confirmed that certification conforms to international standards and, because the qualification processes between OEMs are similar in nature, that seat thermal heat mat suppliers can leverage the work made with respect to the qualification with one OEM to another. The market investigation confirmed that the majority of respondents required qualification procedures from their seat thermal heat mat suppliers that are similar in scope, i.e. (i) having the requisite IATF certification, (ii) passing Tier 1 or OEMs onsite inspections of the production plants, and (iii) meeting certain financial and other criteria determined by the Tier 1 and OEM.¹³² Further, a majority of respondents in the market investigation also confirmed that seat thermal heat mats do not have regional specificities.¹³³ These characteristics of the supply seat thermal heat mats indicate that it would be relatively easy for customers to leverage their existing relationships with suppliers located in Asia or in North America, as well as for the suppliers located in those geographic markets, to start supplying in the EEA.
- (105) *Fifth*, the Commission confirmed that it is not necessary for a heat mat supplier to have a production plant in the EEA or in its neighbouring countries to supply EEA-based customers. In the market investigation, a large majority of seat thermal heat mat customers responded that owning a production plant based in the EEA or its neighbouring countries is not an essential requirement for a supplier to be considered in a tender, as suppliers can use warehouses instead.¹³⁴ As a result, any seat thermal heat mat supplier with spare capacity in Asia or North America could be regarded as a potential supplier for demand in the EEA, and could potentially be invited by a Tier 1 or an OEM to participate in a tender. The results of the market investigation are therefore contrary to certain concerns raised during the investigation regarding the competitiveness (e.g., because of transport costs) and the efficiency (e.g., because of supply chain management) of being supplied through warehouses in the EEA. With respect to efficiency and competitiveness, further to the responses to the market investigation, the Commission also notes that (i) a significant volume of sales of seat thermal heat mats, including those corresponding to those of Kwangjin and Kurabe, are presently sourced by Tier 1

¹²⁸ Non-confidential version of the responses to question D.27 of the eRFI to OEMs.

¹²⁹ Non-confidential version of the responses from competitors to Question D.19 of the eRFI to Tier 2 suppliers. E.g., one Tier 2 supplier “*estimates the costs to be in range of USD 250,000 to 500,000 or more.*”

¹³⁰ E.g., according to Lear’s bidding data, the median tender had a value of EUR 15.4 million, and the average tender EUR 21.5 million – cf. Form CO, paragraph 103(a).

¹³¹ Non-confidential version of the responses to question D.22 of the eRFI to OEMs.

¹³² Non-confidential version of the responses to question D24 of the eRFI to OEMs, question D.25 of the eRFI to Tier 1 suppliers, and question D.16 of the eRFI to Tier 2 suppliers.

¹³³ Non-confidential version of the responses to question D.18 of the eRFI to OEMs, question D.19 of the eRFI to Tier 1 suppliers, and question D.8 of the eRFI to Tier 2 suppliers.

¹³⁴ Non-confidential version of the responses to question D.28 of the eRFI to OEMs, and D.29 of the eRFI to Tier 1 suppliers.

suppliers or OEMs in the EEA through warehouses,¹³⁵ which attests to the fact that issues regarding supply chain management have been addressed; and (ii) although price competitiveness is important, it is not the sole criterion leading to an award of a contract to a seat thermal heat mat supplier (quality, availability and reliability considerations apply as well).¹³⁶

- (106) *Sixth*, in the Commission's view, the cost and the time required to set up new plant, or to expand the capacity of an existing production plant of seat thermal heat mats, are such that it would be feasible to install new or to expand capacity in a timely manner.
- (107) During the market investigation, suppliers of seat thermal heat mats indicated that setting up a new production plant requires between two to four years.¹³⁷ In the Commission's view this would be sufficiently timely because it is in line with the period from the start of a tender (by a Tier 1 or OEM) to the delivery of the first seat thermal heat mats generally (which typically requires approximately two years).¹³⁸ In other words, a given OEM could invite a supplier to set up a new production plant in the EEA or in its neighbouring countries within the lifecycle of its next tender procedure if it is unsatisfied with the outcome of a given tender. The OEMs' willingness to accommodate entry was shown during the market investigation: a large majority of OEMs confirmed that they would consider awarding the supply of heat mats to a supplier that is in the process of setting up its production plant in the EEA.¹³⁹
- (108) Regarding the cost of setting up a new production plant, the values provided by seat thermal heat mats suppliers differ.¹⁴⁰ The Commission notes, however, that (i) since 2015 Lear,¹⁴¹ Gentherm¹⁴² and AEW¹⁴³ have decided to invest in new facilities, which indicates that such investments are frequent, and (ii) that the revenues that can be expected from the award of one or two contracts exceed the total costs of setting up new production plants.¹⁴⁴
- (109) Similarly, the Commission considers that investing in the expansion of capacity is feasible and timely for a supplier of seat thermal heat mats: respondents to the

¹³⁵ Cf. Minutes of the meeting with an OEM of 20 January 2023, paragraph 10.

¹³⁶ E.g., non-confidential version of the response from a Tier 1 competitor to question 6 of the eRFI 1 to Tier 1 suppliers.

¹³⁷ Non-confidential version of the responses to question D.21 of the eRFI to Tier 2 suppliers. A period of four years is the highest suggested in the responses to the market investigation. The Notifying Party's main production plant was set up in a period of 12-18 months (partly through the transfer of machinery from a previous plant). A Tier 2 competitor indicated that the period required to set up a new plant is approximately two years. In its response, another Tier 2 competitor stated that the period necessary to set up a new plant is between two and four years. Another Tier 2 competitor indicated that setting up a new plant requires a period of three years.

¹³⁸ Form CO, paragraph 358.

¹³⁹ Non-confidential version of the responses to question D.30 of the eRFI to OEMs.

¹⁴⁰ Non-confidential version of the responses to question D.21 of the eRFI to Tier 2 suppliers. One Tier 2 supplier estimated the cost of setting up a new seat thermal heat mat production facility is approximately EUR 10 million and another Tier 2 supplier estimated USD 20-30 million.

¹⁴¹ Form CO, paragraph 214.

¹⁴² Non-confidential version of a response from a Tier 2 competitor to question 2 of the RFI 1 to Tier 2 suppliers.

¹⁴³ Cf. Minutes of the meeting with a competitor of 9 January 2023, paragraph 3.

¹⁴⁴ See fn. 130 above.

market investigation noted that they would require a period of one year to expand their production lines,¹⁴⁵ which is consistent with the Parties' experience.¹⁴⁶

- (110) *Seventh*, the market investigation confirmed the Notifying Party's claim that the technology incorporated in seat thermal heat mats is mature and widely available, and that there are no intellectual property hurdles to enter the market.¹⁴⁷
- (111) In sum, in the Commission's view, the characteristics of the seat thermal heat mat market are such that it is likely that, post-merger, existing suppliers could expand their capacity and that customers could have recourse to suppliers using warehouses to supply in the EEA or able to set up new production capabilities in the EEA or its neighbouring countries. It follows that existing competition and potential entry appear to be sufficient to deter or defeat potential anticompetitive effects resulting from the loss of one competitor. This is particularly so because, as noted in the section below, customers play an active role in stimulating competition for seat thermal heat mats.

5.2.6. *Countervailing buyer power*

The Notifying Party's views

- (112) The Notifying Party claims that an additional consideration that applies to the Transaction is that customers of seat thermal heat mats have "*considerable countervailing buyer power*"¹⁴⁸ and, as a result, the Parties "*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.*"¹⁴⁹ The Notifying Party submits several reasons that, in its view, show that Tier 1 suppliers and OEMs have buyer power when purchasing seat thermal heat mats.

The Commission's assessment

- (113) The Commission notes that one important feature of the relevant market is the role played by the OEM and the use of a "directed-buy" strategy. Pursuant to that strategy, the OEM choose directly Tier 2 component suppliers, negotiate the terms and conditions with them and direct Tier 1 suppliers (such as Lear) to buy components from the Tier 2 suppliers. In that respect, the market investigation confirmed the Notifying Party's claim that sales of seat thermal heat mats are to a large extent "directed" (more than [70-80]% based on the Parties' estimates of their sales and also of the total market¹⁵⁰)¹⁵¹ and that generally OEMs expect to continue to "direct" purchases in the next five years.¹⁵²

¹⁴⁵ Non-confidential version of the responses to question D.21 of the eRFI to Tier 2 suppliers.

¹⁴⁶ Form CO, paragraph 357.

¹⁴⁷ Non-confidential version of the responses to question D.18 of the eRFI to OEMs, D.19 of the eRFI to Tier 1 suppliers, and D.10 of the eRFI to Tier 2 suppliers.

¹⁴⁸ Form CO, paragraph 363.

¹⁴⁹ *Ibid.*

¹⁵⁰ RFI 8, question 2.

¹⁵¹ Form CO, Tables 17-19.

¹⁵² Non-confidential version of the responses to question D.8 of the eRFI to OEMs, question D.9 of the eRFI to Tier 1 suppliers, and D.4 of the eRFI to Tier 2 suppliers.

- (114) As a result, the OEM, by directing the supplies, can influence the market structure to a great extent and should they deem it necessary, enhance the ability of other Tier 2 suppliers to enter the market in a timely manner.
- (115) In that respect, the Commission understands that OEMs and Tier 1 suppliers organise tenders with relative frequency, have global presences and search actively for new suppliers to instil competition in their supply chains.¹⁵³ For example, a majority of OEMs in the market investigation stated that they would invite suppliers active in Asia or in North America to participate in their tenders for seat thermal heat mats in the event of a decrease in potential respondents.¹⁵⁴
- (116) In the second place, the market investigation confirmed that OEMs and Tier 1 suppliers have a high degree of visibility over the costs of their seat thermal heat mat suppliers and hence are able to identify quickly any attempt to increase prices.¹⁵⁵
- (117) It follows that OEMs play an active role in stimulating competition for seat thermal heat mats and, due to their global presence, are in a good position to identify potential price increases resulting from a decrease in competition between car seat heat mat suppliers. Suppliers, including the Parties post-merger, are therefore likely to be constrained in their pricing due the threat of entry referred in the section above.

5.2.7. *Conclusion on non-coordinated effects*

- (118) In light of the above, the Commission considers that the Transaction is unlikely to give rise to horizontal non-coordinated effects that would significantly impede effective competition in the supply of seat thermal heat mats in the EEA (the narrowest and most conservative geographic market definition).¹⁵⁶ In particular, in the Commission's view, the evidence available suggests that (i) suppliers such as Kurabe, Kwangjin and AEW already pose a significant constraint on the Parties (and on Gentherm) through their participation in tenders, (ii) customers do not face significant switching costs and would not face significant hurdles in switching their demand away from the Parties, and (iii) suppliers can enter or expand their presence in the EEA, with sufficient scale and in a timely manner.
- (119) These findings are generally consistent with the views received during the market investigation. A majority of respondents stated that the Transaction will lead to no, or to only a very limited impact on prices of seat thermal heat mats.¹⁵⁷ With regard to the overall impact of the transaction,¹⁵⁸ and the specific impact on each

¹⁵³ E.g., minutes of the meeting with a competitor of 18 January 2023, paragraph 4.

¹⁵⁴ Non-confidential version of the responses to question D.28 of the eRFI to OEMs.

¹⁵⁵ Non-confidential version of the responses to question D.11 of the eRFI to OEMs, question D.12 of the eRFI to Tier 1 suppliers and question D.6 of the eRFI to Tier 2 suppliers.

¹⁵⁶ The assessment set out herein is all the more valid if the Commission considered in its competitive assessment the global market for the supply of seat thermal heat mats. As follows from Table 3 and Table 4, at a global level the Parties have combined market shares of 27.5% in 2021, and 29.2% in 2022. Such market shares, in conjunction with the absence of switching costs and the ability to expand, make it even less likely at a global level that the Transaction would result in horizontal non-coordinated effects leading to a significant impediment of effective competition in the supply of seat thermal heat mats.

¹⁵⁷ Responses to Question E.1 of the eRFI to OEMs, Tier 1 suppliers and Tier 2 suppliers.

¹⁵⁸ Responses to Question E.3 of the eRFI to OEMs, Tier 1 suppliers and Tier 2 suppliers.

respondent,¹⁵⁹ the results of the market investigation were mixed: most OEMs state that the Transaction would have a positive or neutral overall impact, and no or a limited impact with respect to their companies.¹⁶⁰ Lear's rivals (at Tier 1 or Tier 2 level) generally have a more negative view of the Transaction, with most stating that it will be negative to their companies.¹⁶¹

- (120) The Commission notes that the reasons adduced by respondents to consider the Transaction to have a negative outcome differ significantly. With respect to concerns of a horizontal nature, the negative views expressed by Tier 1 suppliers relate to the claim that post-Transaction there would be no significant suppliers available apart from Lear and Gentherm,¹⁶² which as noted above is not borne out by the evidence gathered during the market investigation. With regard to Tier 2 suppliers, one claims that as a result of the Transaction seat thermal heat mat customers will demand lower prices.¹⁶³ Therefore, the Commission considers that these concerns do not call into question its finding that that the Transaction does not raise serious doubts as far as horizontal non-coordinated effects are concerned.

¹⁵⁹ Responses to Question E.7 of the eRFI to OEMs, and Question E.5 to Tier 1 suppliers and Tier 2 suppliers.

¹⁶⁰ Responses to Questions E.3 and E.7 of the eRFI to OEMs.

¹⁶¹ Responses to Questions E.3 and E.5 of the eRFI to Tier 1 suppliers and Tier 2 suppliers.

¹⁶² Non-confidential version of a response from a Tier 1 competitor to Question E.2 of the eRFI to Tier 1 suppliers.

¹⁶³ Non-confidential version of a response from a Tier 2 competitor to Question E.6 of the eRFI to Tier 2 suppliers.

5.3. Horizontal coordinated effects

- (121) One complainant suggested, without substantiating, that the Transaction could raise concerns in relation with coordinated effects in the supply of seat thermal heat mats, due to an increased transparency on who wins tenders.¹⁶⁴
- (122) The Commission considers that the market for the supply of seat thermal heat mats does not have characteristics such as to give rise to a risk of coordinated effects as a result of the Transaction, in particular for the following reasons. First, these concerns have not been raised by other market participants. Second, the Commission notes that the market does not seem particularly transparent as prices are discussed bilaterally with customers and generally in the context of tenders or requests for quotations. Third, as explained by the Notifying Party, not all suppliers receive every request for quotation so that there is asymmetrical information between suppliers. Fourth, on the fact that the Transaction would lead to increased transparency on who wins tenders, the Commission notes that the information is already generally known by the market participants and in that respect, the Transaction will not bring significant changes on the market.

5.4. Non-horizontal effects¹⁶⁵

5.4.1. Analytical framework

- (123) The legal test for the assessment of non-horizontal effects of a merger is set out in the Merger Regulation and the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-horizontal Merger Guidelines').¹⁶⁶
- (124) According to the Non-horizontal Merger Guidelines, foreclosure effects in a vertical scenario may occur where actual or potential rivals' access to supplies (i.e. input foreclosure) or markets (i.e. customer foreclosure) is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.¹⁶⁷
- (125) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, whether it would have the incentive to do so, and whether a foreclosure strategy would have a significant

¹⁶⁴ Non-confidential version of the presentation for the meeting of 12 July 2022.

¹⁶⁵ The Commission notes that one respondent to the market investigation suggested that the merged entity could engage in mixed bundling and offer OEMs discounts for a JIT assembly including its own components that other competitors would not be able to replicate. However, the Commission notes that this concern is not substantiated and has not been raised by any other respondent. First of all, in view of the number of components required to manufacture a complete seat, Lear's slight extension of portfolio resulting from the Transaction (seat sensors) does not modify a pre-existing situation where Lear can already bundle some products together. Second, the supply relationship between component manufacturers and OEMs make bundling and tying unlikely, as the OEMs specify the product in their tenders, to which suppliers react by developing the product according to the OEM's specifications. In that respect, the Commission understands that bundling components together is not market practice and the tenders are organised separately for each component by the OEM and the Tier 1 (Form CO, Paragraph 424 and ff or minutes of a call with a competitor dated 13 October 2022).

¹⁶⁶ OJ C 265, 18.10.2008, p. 6.

¹⁶⁷ Non-horizontal Merger Guidelines, paragraph 18.

detrimental effect on competition downstream.¹⁶⁸ Those conditions are cumulative.¹⁶⁹

- (126) Similarly, in assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, whether it would have the incentive to reduce its purchases upstream, and whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.¹⁷⁰ Those conditions are cumulative.¹⁷¹
- (127) In view of Lear’s market share on the downstream market for the supply of JIT assembly of complete car seats, affected markets arise regarding all three vertically linked car seat components (seat thermal heat mats, seat ventilation and seat sensors). Considering the moderate position of the Parties in the upstream market for the supply of vent systems (below [10-20]%¹⁷²), the Commission will focus its analysis on the supply of seat thermal heat mats and seat sensors, where the upstream market position of the merged entity would be more significant. The same reasoning would apply to the other vertically affected market.

5.4.2. Market shares

- (128) The Parties’ and their competitors’ market shares for the upstream market for the supply of seat thermal heat mats are presented in Tables 1 – 6.
- (129) For the other upstream market (where there is no horizontal overlap), i.e. the market for seat sensors, where the Target is active but not Lear, the market shares are presented in Table 7 below for the narrowest plausible segment, i.e. for pressure sensors for car seats.¹⁷³

Table 7 - Market shares (%) for pressure sensors for car seats, 2020, 2021 and 2022 (by volume)

Component supplier	Global			EEA		
	2020	2021	2022	2020	2021	2022
Target	[0-5]%	[5-10]%	<10%	[10-20]%	[10-20]%	[20-30]%
IEE Sensing	[20-30]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%
AEW	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%
Scherdel Marienberg	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%

¹⁶⁸ Non-horizontal Merger Guidelines, paragraph 32.

¹⁶⁹ See Judgement of the General Court in case T-370/17 – KPN v Commission, paragraph 119.

¹⁷⁰ Non-horizontal Merger Guidelines, paragraph 59.

¹⁷¹ See Judgement of the General Court in case T-370/17 – KPN v Commission, paragraph 119.

¹⁷² As a reminder, this market is not horizontally affected as the Parties’ combined market share is 12,6% with the Target having only 2,6% of the market in 2022 (and no sales in 2021). In view of the limited market shares and increment, the Commission considers that the Transaction cannot raise any issue in relation to this vertical link, even more so given that Lear is already vertically integrated in this respect.

¹⁷³ These shares include legacy sales. The Notifying Party confirmed that it expects the market shares of the Target to be similar if legacy sales are excluded (response to RFI 8).

Component supplier	Global			EEA		
	2020	2021	2022	2020	2021	2022
Aptiv	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Fujikura Automotive	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Aisin Seiki	[5-10]%	[5-10]%	[5-10]%	N/A	N/A	N/A
Others	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[0-5]%
Total	100%	100%	100%	100%	100%	100%

Source: Form CO, Table 41 and Notifying Party's responses to RFIs 7 and 8.

- (130) For the downstream market, i.e. the market for the JIT assembly of complete car seats, as presented in Table 8 to Table 11 below, the market shares of Lear are between [20-30]% and [30-40]% in the EEA, depending on whether the production achieved internally by the OEM (in-house) is taken into account or not.

Table 8 - Market shares (%) for the JIT assembly of complete car seats for OEMs in EEA (volume, excluding OEM in-house capacity)

Complete car seat assembly for OEMs – Volume – EEA (excluding OEM in-house capacity)						
Company	2019		2020		2021	
	Sales (M unit sets)	Share (%)	Sales (M unit sets)	Share (%)	Sales (M unit sets)	Share (%)
Lear	[...]	[20-30]%	[...]	[20-30]%	[...]	[30-40]%
Adient	[...]	[40-50]%	[...]	[30-40]%	[...]	[30-40]%
Faurecia	[...]	[10-20]%	[...]	[5-10]%	[...]	[20-30]%
Magna	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Other	[...]	[10-20]%	[...]	[20-30]%	[...]	[5-10]%
Total	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, table 44

Table 9 - Market shares (%) for the JIT assembly of complete car seats for OEMs in EEA (value, excluding OEM in-house capacity)

Complete car seat assembly for OEMs – Value – EEA						
Company	2019		2020		2021	
	Sales (B USD)	Share (%)	Sales (B USD)	Share (%)	Sales (B USD)	Share (%)
Lear	[...]	[20-30]%	[...]	[20-30]%	[...]	[30-40]%
Adient	[...]	[40-50]%	[...]	[30-40]%	[...]	[30-40]%
Faurecia	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%
Magna	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Other	[...]	[10-20]%	[...]	[20-30]%	[...]	[0-5]%
Total	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, table 44

Table 10 - Market shares (%) for the JIT assembly of complete car seats for OEMs in EEA (volume, including OEM in-house capacity)

Complete car seat assembly for OEMs – Volume – EEA						
Company	2019		2020		2021	
	Sales (M unit sets)	Share (%)	Sales (M unit sets)	Share (%)	Sales (M unit sets)	Share (%)
Lear	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Adient	[...]	[30-40]%	[...]	[30-40]%	[...]	[20-30]%
Faurecia	[...]	[10-20]%	[...]	[5-10]%	[...]	[10-20]%
Magna	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
OEMs	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%
Other	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%
Total	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, table 45

Table 11 - Market shares (%) for the JIT assembly of complete car seats for OEMs in EEA (value, including OEM in-house capacity)

Complete car seat assembly for OEMs – Value – EEA						
Company	2019		2020		2021	
	Sales (B USD)	Share (%)	Sales (B USD)	Share (%)	Sales (B USD)	Share (%)
Lear	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Adient	[...]	[30-40]%	[...]	[30-40]%	[...]	[20-30]%
Faurecia	[...]	[10-20]%	[...]	[5-10]%	[...]	[10-20]%
Magna	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%
OEMs	[...]	[10-20]%	[...]	[5-10]%	[...]	[10-20]%
Other	[...]	[10-20]%	[...]	[10-20]%	[...]	[0-5]%
Total	[...]	100 %	[...]	100 %	[...]	100 %

Source: Form CO, table 45

5.4.3. The Notifying Party's view

- (131) The Notifying Party submits that the proposed Transaction will not lead to any input or customer foreclosure. The Parties will not have the ability to substantially foreclose access to the components for car seats (seat thermal heat mats, seat ventilation or seat sensors) or to an important customer in the downstream market (i.e. Lear). Furthermore, the Parties would not have any incentive to do so.¹⁷⁴
- (132) As regards input foreclosure, the Notifying Party explains that the directed-buy strategy (where an OEMs directs which Tier 2 supplier its Tier 1 supplier must use) followed by OEMs significantly restrains Lear's ability to engage in input foreclosure and such a strategy is at the discretion of the OEM. Where OEMs use a directed-buy strategy, Lear must negotiate terms and conditions with the OEMs

¹⁷⁴ Form CO, paragraph 369.

that, according to the Notifying Party, enjoy, and will continue to enjoy, significant buying power.¹⁷⁵

- (133) Even when OEMs are not applying a directed-buy strategy, suppliers must provide the OEMs with detailed calculations of costs, margins, etc., (“open book policy”) and it is not uncommon for OEMs to reach out to their Tier 1 and Tier 2 suppliers to confirm their understanding of the suppliers’ costs, margins etc., including reaching out directly to Tier 2 suppliers for this information (which can be used for future OEM directed-buy decisions, as well as to inform the OEM’s assessment of its ongoing supply agreements with Tier 1 suppliers).¹⁷⁶
- (134) As regards customer foreclosure, the Notifying Party insists on the fact that with a market share of maximum [30-40]% (when excluding OEM in-house production), it does not have the ability to engage in customer foreclosure. In particular, as a significant part of Lear’s seat thermal heat mat purchases are directed by OEMs, Lear does not select the supplier or the terms and conditions of supply.¹⁷⁷

5.4.4. *The Commission’s assessment*

5.4.4.1. Vertical links between the supply of seat thermal heat mats and the JIT assembly of complete car seats

5.4.4.1.1. Customer foreclosure

- (135) According to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In turn, this may raise downstream rivals’ costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market. Any efficiencies resulting from the merger, however, may lead the merged entity to reduce price, so that there is overall not a negative impact on consumers.¹⁷⁸
- (136) The Commission observes that any negative effect in terms of customer foreclosure can be dismissed because the market position of Lear in the downstream market for the JIT assembly of complete car seats is limited, especially when looking at the non-directed buy part of the supplies. As the sourcing on the market is directed by the OEMs to a large extent and will continue to be in the coming years, Lear does not have the possibility to stop working with competing upstream suppliers but must source from the suppliers selected by the OEM.
- (137) As regards the remaining part of the market, Lear is vertically integrated, meaning that, in theory, Lear could already exclude competing suppliers of seat thermal heat mats from its downstream activity for the JIT assembly of complete car seats, at

¹⁷⁵ Form CO, paragraphs 376-377.

¹⁷⁶ Form CO, paragraph 379.

¹⁷⁷ Form CO, paragraph 396.

¹⁷⁸ Non-horizontal Merger Guidelines, paragraph 58.

least for new programmes. Therefore, any hypothetical customer foreclosure effect would not be merger-specific.

- (138) Moreover, even when the OEMs leave the selection of Tier 2 suppliers to the Tier 1 suppliers, they exercise influence over the choice as they usually have a detailed knowledge of the cost structure and manufacturing processes of their suppliers and can detect quickly any attempt to increase prices or alter quality (see recital(116)).
- (139) Last, during the market investigation, none of the Parties' upstream competitors raised substantiated concerns in relation with customer foreclosure.¹⁷⁹

5.4.4.1.2. Input foreclosure

- (140) According to the Non-Horizontal Merger Guidelines, for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market. It is only in these circumstances that the merged firm can be expected to have a significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.¹⁸⁰ It adds that "*the merged entity would only have the ability to foreclose downstream competitors if, by reducing access to its own upstream products or services, it could negatively affect the overall availability of inputs for the downstream market in terms of price or quality. This may be the case where the remaining upstream suppliers are less efficient, offer less preferred alternatives, or lack the ability to expand output in response to the supply restriction, for example because they face capacity constraints or, more generally, face decreasing returns to scale*".¹⁸¹
- (141) In the case at hand, one Tier 1 competitor expressed concerns as regard its possibility to source post-Transaction the seat thermal heat mats at competitive conditions as Lear might not offer the best conditions to its competitors on the market for the JIT assembly of complete car seats (downstream).¹⁸²
- (142) However, several elements suggest that, despite high market shares, the new entity will not have a significant degree of market power on the market for the supply of seat thermal heat mats and will therefore not have the ability to engage into input foreclosure.
- (143) In this respect, the considerations listed above (Section 5.2) in relation to the upstream market for the supply of seat thermal heat mats are relevant, in particular as regards the expansion of Asian suppliers in the EEA and the competitive constraints they will pose on the new entity.

¹⁷⁹ See non-confidential responses to eRFI sent to Tier 2 suppliers as well as minutes of calls with Tier 2 competitors dated 13 October 2022, 9 and 18 January 2023.

¹⁸⁰ Non-horizontal Merger Guidelines, paragraph 35.

¹⁸¹ Non-horizontal Merger Guidelines, paragraph 36.

¹⁸² Non-confidential version of the presentation for the meeting of 12 July 2022 and non-confidential version of the responses to question E.2 in the eRFI to Tier 1 competitors. In addition, this Tier 1 competitor explained that post-Transaction, the Parties could use "*the design information of competing Tier 1 suppliers to gain a competitive advantage in the tenders*". However, in view of the fact that the products are largely commoditized (as explained in recital (92)) without important innovation, the Commission considers that this concern is not substantiated.

- (144) *First*, the Commission recalls that OEMs source directly a significant part of the market (see recital (114)) and they can always decide to change their sourcing strategy towards more or less direct sourcing depending on their preferences.¹⁸³ For the directed part of the supplies, the Commission notes that neither the complainants nor the other respondents to the market investigation has submitted that the Parties could refuse to supply seat thermal heat mats.¹⁸⁴ Indeed, Lear is not in a position to refuse supply of seat thermal heat mats to competing downstream rivals and has to perform the contracts negotiated with the OEM according to their terms and conditions. Otherwise, Lear would take the risk of being excluded from future tenders organised by OEMs, including on the JIT assembly of complete car seats, and then to lose significant business downstream. In that respect, the Commission understands that the OEMs are the ones that decide the products they want to source directly and also the suppliers they want to invite to their tenders.¹⁸⁵ They can always decide to invite new suppliers in an “*overall sourcing strategy to add pressure*” on current suppliers.¹⁸⁶ Should Lear refuse to supply a competing Tier 1 in the context of a specific contract/programme, the OEM could retaliate by not inviting it to future tenders, such as the tenders for the JIT assembly of complete car seats. In this respect, the Commission notes that the vast majority of the OEMs that responded to the market investigation explained that on the downstream market, there were, besides Lear, sufficient competitors with sufficient capabilities to provide JIT assembly of complete car seats in the EEA.¹⁸⁷ This means that they could decide not to invite Lear and still have sufficient bidders to obtain competitive conditions. The same is true regarding any attempt by Lear to engage in partial input foreclosure as the OEMs would likely be informed by the Tier 1 suppliers of the difficulties they face¹⁸⁸ and could adopt or threaten to adopt similar retaliatory measures.
- (145) *Second*, Lear’s foreclosure strategy would be likely to fail as the OEMs and competing Tier 1s would continue to have credible competing suppliers that are not vertically integrated, such as Gentherm, Kurabe or AEW. In that respect, several upstream competitors consider that they would have increased opportunities to supply their seat thermal heat mats.¹⁸⁹ For example, one explained that “*Some customers which had no direct businesses and almost only purchased from our competitors and had no interest in our company recently contacted us and gave us the chance to have a business with them*”.¹⁹⁰ Another one stated that it “*expects other Tier 1s to increase their demand for [its] products, and hopes to develop sales in Europe through this diversion of sales.*”¹⁹¹
- (146) On the basis of the above, in the absence of ability to foreclose, the Transaction is unlikely to result in any input or customer foreclosure in relation to the vertical link

¹⁸³ Non-confidential version of the responses to questions D. 8.2 to D.10 in the eRFI to OEMs.

¹⁸⁴ E.g., Non-confidential version of the presentation for the meeting of 12 July 2022.

¹⁸⁵ Form CO, paragraph 360 as well as minutes of a call with a Tier 1 competitor dated 18 January 2023 or with an OEM dated 20 January 2023.

¹⁸⁶ Minutes of a call with a Tier 1 competitor dated 18 January 2023.

¹⁸⁷ Non-confidential version of the responses to question D.6 in the eRFI to OEMs.

¹⁸⁸One OEM explained in particular that the Tier 1 suppliers are very keen to express as regards concerns/bottlenecks in their supply chains to OEMs (see minutes of a call with OEM dated 2 December 2022)

¹⁸⁹ See recital (101) above.

¹⁹⁰ Non-confidential version of the response from a Tier 2 competitor to question E.6 in eRFI to Tier 2 suppliers.

¹⁹¹ Non-confidential version of the minutes of a call with a competitor dated 9 January 2023.

between the JIT assembly of complete car seats and the supply of seat thermal heat mats and the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

5.4.4.2. Vertical links between the supply of seat sensors (upstream) and the JIT assembly of complete car seats (downstream)

(147) As it can be seen in Table 8 to Table 11, since Lear's position in the JIT assembly of complete car seats exceeds 30%, a market situated downstream to the market for the supply of seat sensors on which the Target is active, the proposed transaction gives rise to a vertically affected market.

(148) However, the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement insofar as this vertical relationship is concerned given that:

(a) As regards *customer foreclosure*, the Commission notes that as they do for the supply of seat thermal heat mats, the OEMs direct, to a significant extent, the supply of seat sensors. In such cases, Lear does not have the ability to decide not to buy from competing Tier 2 suppliers. For the non-directed sales, Lear's upstream competitors supplying seat sensors will still be able to sell products to several Tier 1 suppliers, such as Adient, Forvia or Magna. In view of its market share and of the existence of several important Tier 1 competitors, Lear does not have the ability to foreclose its Tier 2 competitors' access to customers.

(b) As regards *input foreclose*, the Commission notes that:

- the market shares of the Target – of [20-30]% in 2022, as indicated in Table 7 above – remain moderate in the upstream market and the downstream competitors will continue to be able to source from various alternative suppliers such as IEE Sensing, AEW, Scherdel Marienberg or Aptiv; and
- the Parties explain that, as for the supply of seat thermal heat mats, OEMs source directly a quite significant part of the market (above 50%¹⁹²) and they can always decide to change their sourcing strategy towards more or less direct sourcing depending on their preferences.¹⁹³ As a result, as explained in recital (144), Lear is not in a position to refuse supply of seat thermal heat mats to competing downstream rivals and has to perform the contracts negotiated with the OEM according to their terms and conditions. Otherwise, Lear would take the risk of being excluded from future tenders organised by OEMs including on the JIT assembly of complete car seat and then to lose significant business downstream. The same is also true should Lear engage in a partial foreclosure strategy towards its competing Tier 1 suppliers as explained in recital (144).

(149) On the basis of the above, in the absence of ability to foreclose, the Transaction is unlikely to result in any input or customer foreclosure in relation with seat sensors and the Commission concludes that the Transaction does not raise serious doubts as

¹⁹² Form CO, para 143.

¹⁹³ Form CO, para 376.

to its compatibility with the internal market or the functioning of the EEA Agreement.

6. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President