

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of)
)

Robert Bosch GmbH,)
a corporation.)

Docket No. C-4377

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Robert Bosch GmbH, a corporation subject to the jurisdiction of the Commission has: (1) agreed to acquire the SPX Service Solutions business (“SPX Service Solutions”) from SPX Corporation, a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and (2) has engaged in conduct that violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Robert Bosch GmbH (“Bosch”) is a corporation organized, existing, and doing business under and by virtue of the laws of Germany, with its principal U.S. subsidiary, Robert Bosch LLC, a limited liability company organized, existing and doing business under the laws of the State of Delaware with its headquarters at 38000 Hills Tech Drive, Farmington, MI 48331. Bosch is a leading global supplier of automotive and industrial technology, consumer goods and building technology. Bosch employs approximately 300,000 people and had sales of over \$71 billion in fiscal year 2011. In North America, Bosch has approximately 22,500 employees and had revenues of approximately \$9.8 billion in 2011. Bosch, through its subsidiary RTI Technologies, Inc., develops, manufactures and markets air

conditioning recovery, recycling and recharging systems (“ACRRR”) for motor vehicles, sold under the brand names Bosch and RTI in the United States. After the Acquisition, Bosch shall include SPX Service Solutions, and its Robinair-brand ACRRRs.

2. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE ACQUIRED COMPANY

3. SPX Service Solutions is a division of SPX Corporation, with its headquarters address located at 28635 Mound Road, Warren, MI 48092. SPX Service Solutions is comprised of various legal entities and assets (including the patents referenced in Paragraph 15 herein) that

7. For the purposes of this Complaint, the United States is the relevant geographic

12. Industry standards for ensuring compliance with EPA regulations during the repair of MVACs are established by SAE. Standards for ACRRRs at SAE are established by SAE's Interior Climate Control Standards Committee ("ICCSC").

13. Two SAE standards established for the regulation of ACRRR equipment are J-2788 and J-2843. J-2788 relates to a type of air conditioner refrigerant called HFC-134a. This standard establishes the specific minimum equipment performance requirements for recovery and recycling of HFC-134a that has been directly removed from, and is intended for reuse in, MVACs. It also is intended to establish requirements that the equipment used to recharge MVACs utilizing HFC-134a meet certain specified accuracy levels established by SAE J-2099 (another SAE standard). J-2843 relates to another air conditioner refrigerant called R-1234yf. Like J-2788, J-2843 establishes requirements that the equipment used to recharge MVACs with R-1234yf refrigerant meet certain specified accuracy levels established by SAE J-2099.

14. A representative(s) of SPX Service Solutions was a working group member of SAE's ICCSC during the drafting of SAE J-2788 and SAE J-2843.

15. Section 1.14 of SAE's Technical Standards Governance Board Policy Manual ("the SAE Policy Manual") requires that a working group member that owns, controls or licenses potentially standard essential patents make such patents available for licensing either (1) without compensation or (2) under reasonable terms and conditions that are demonstrably free of any unfair discrimination. These licensing commitments enable SAE to include relevant patents in its standards, and have confidence in the subsequent widespread adoption of the standard.

16. After the adoption of SAE J-2788, SPX Corporation sued certain competitors, including Bosch, for infringing patents that may be essential to the practice of SAE J-2788. After the adoption of J-2843, SPX amended its complaint to include a patent essential to the practice of J-2843. SPX Corporation sought injunctive relief in this lawsuit.

17. Following the commencement of the suit described in paragraph 16, SAE sought assurance from SPX Service Solutions that it did not hold or currently intend to hold any invention claimed in a patent the use of which would be required for compliance with SAE J-2788 and J-2843 standards; or in the alternative, written assurance that SPX Service Solutions would license its standard-essential patents royalty-free or under reasonable terms and conditions that were demonstrably free of any unfair discrimination.

18. After receiving the letter from SAE referenced in Paragraph 17, SPX Service Solutions provided a letter of assurance to SAE stating that it believed it owned or controlled patents or pending patent applications that it believed could potentially be infringed by compliance with SAE J-2788 and SAE J-2843, and that, to the extent that a claim is essential to

19. Despite its letter of assurance to SAE, however, SPX Service Solutions continued to prosecute the suit for injunctive relief described in Paragraph 16. The defendants in this suit were willing licensees of SPX Service Solutions' standard-essential patents.

20. SPX Service Solutions' breach of its commitment to offer licenses its standard-essential patents pursuant to its obligations under 1.14 of the SAE Policy Manual by seeking injunctive relief over the same standard-essential patents, would exclude its competitors from the market, have caused, or threaten to cause, harm to competition and will continue to do so unless the relief requested herein is granted. SPX Service Solutions' conduct, if left unchecked, tends to undermine the vitality of the standard-setting process.

IX. VIOLATIONS CHARGED

21. The Acquisition Agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

22. The Acquisition described in Paragraph 8, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

23. The allegations alleged in paragraph 11-20 are incorporated herein by reference. The conduct of SPX Service Solutions and SPX Corporation, constitutes an unfair method of competition in or affecting commerce in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. This conduct, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDEREDsr5i/T1_0 1 Tf0 Tc 0 Tw(21513 0 Td[,f the ke)12