



Office of the Secretary

United States of America  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580

Re: *In the Matter of Robert Bosch GmbH, File No. 121-0081, Docket No. C-4377*

Thank you for your comments regarding the proposed Consent Order accepted by the Federal Trade Commission for public comment in the above-captioned matter. The proposed Consent Order is designed to remedy the anticompetitive effects resulting from Bosch's



Some commenters expressed concern that the risk of hold-up actually is not a factor in patent licensing negotiations. We disagree. The Commission has ample justification for taking action where it has reason to believe that conduct will facilitate patent hold up in the standard-setting context. The threat of an injunction or exclusion order distorts the bargaining dynamic between the owner of a standard-essential patent and a potential licensee in a way that undermines the procompetitive goals of the FRAND agreement. As the Commission noted in its recent statement to the ITC, “[T]he threat of an exclusion order may allow the holder of a [F]RAND-encumbered SEP to realize royalty rates that reflect patent hold-up, rather than the value of the patent relative to alternatives, which could raise prices to consumers while undermining the standard setting process.”<sup>6</sup>

Some commenters expressed concern that providing royalty-free licenses to industry participants other than Mahle, the buyer of the divested Bosch ACRRR assets, went beyond what is appropriate to settle this case. The Commission considered this issue in the course of resolving the case, but determined this remedy to be appropriate, and continues to believe that it is appropriate, due to the particular facts of the case. Specifically, prior to the merger, Bosch and two other competitors were defendants in a patent infringement lawsuit brought by SPX involving potentially standard-essential patents. As a result of the merger, Bosch acquired the SPX patents. As part of the divestiture, Bosch chose to license the SPX patents to the buyer of its ACRRR business, Mahle, on a royalty free basis. Without a similar license to the other co-defendants and other market participants, a license solely to Mahle risked creating an inappropriate distortion of the pre-merger market and thus a remedy that would have been inequitable in application. Accordingly, the Commission required, and Bosch agreed, to license other market participants on the same terms that it agreed to license Mahle.

Some commenters raised concerns that the patents to be licensed have not been litigated and found to be standard-essential. This is true, but provides no reason to modify the consent. Bosch elected to resolve the investigation in this area by agreeing to royalty-free licenses before it would have been necessary for the Commission to assess the essentiality and/or validity of any of the patents at issue. Accordingly, the proposed Consent Order does not address infringement or validity of the patents-at-issue.

Finally, some commenters expressed concern that documents and other information supporting the Commission’s basis for the proposed Consent Order have not been made public. The Commission is not at liberty to publicly divulge or discuss in great detail most of the

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<sup>6</sup> Third Party United States Federal Trade Commission’s Statement on the Public Interest filed on June 6, 2012 in *In re Certain Wireless Communication Devices, Portable Music & Data Processing Devices, Computers and Components Thereof*, Inv. No. 337-TA-745, available at [www.ftc.gov/os/2012/06/1206ftcwirelesscom.pdf](http://www.ftc.gov/os/2012/06/1206ftcwirelesscom.pdf) and in *In re Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA- 752, available at <http://www.ftc.gov/os/2012/06/1206ftcgamingconsole.pdf>, at 3-4.

information it gathers during a non-public investigations, because the information is confidential and competitively sensitive. The Commission conducted its non-public review of the proposed transaction pursuant to its authority under Section 7 of the Clayton Act, 15 U.S.C § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. As is its typical process, during the course of its investigation, the Commission reviewed public and non-public information from the merging parties and third parties to reach its conclusions. By statute, such information is not subject to public disclosure.<sup>7</sup>

One comment, however, suggested that our description of SAE's rules regarding patent licensing was inaccurate. Because SAE's rules are public, the Commission is at liberty to provide more detail on this point. The Commission refers interested readers to Rule 1.14.1 of the Governance Policy of SAE's Technical Standards Board. This Rule expressly require members who disclose patents that may be essential to a given standard to commit to license those patents on a royalty free or FRAND basis.<sup>8</sup>

After careful review of the comments, the FTC has determined that the public interest would best be served by issuing the Decision and Order in final form without modification. A copy of the final Decision and Order is enclosed for your information. Relevant materials also