STATEMENT OF THE FEDERAL TRADE COMMISSION
In the Matter of Robert Bosch GmbH
FTC File Number 121-0081

The Federal Trade Commission ("Commission") has voted to issue for public comment a Complaint and Order against Robert Bosch GmbH ("Bosch") designed to remedy the allegedly anticompetitive effects of Bosch's acquisition of SPX Services ("SPX"), a division of SPX Corporation. The Commission has reason to believe that the proposed acquisition would cause significant anticompetitive harm to consumers by creating a virtual monopoly in the market for automobile air conditioning servicing equipment known as "air conditioning recycling, recovery, and recharge devices" or "ACRRRs." The proposed Order eliminates the anticompetitive concerns raised by the proposed acquisition by requiring the divestiture of Bosch's assets relating to the manufacture and sale of ACRRRs to Mahle Clevite, Inc. The proposed Order further requires Bosch to discontinue restrictive arrangements SPX maintained with wholesale distributors and independent service technicians.

The Complaint also alleges that, before its acquisition by Bosch, SPX reneged on a licensing commitment made to two standard-setting bodies to license its standards-essential patents ("SEPs") relating to ACRRRs on fair, reasonable and non-discriminatory terms ("FRAND") by seeking injunctions against willing licensees of those SEPs.[1] We have reason to believe this conduct tended to impair competition in the market for these important automobile air conditioning servicing devices. To its credit, Bosch has abandoned these claims for injunctive relief and agreed to license the SEPs at issue.

This case is another chapter in the Commission's longstanding commitment to safeguard the integrity of the standard-setting process.[2] Standard setting can deliver substantial benefits to American consumers, promoting innovation, competition, and consumer choice. But standard setting also risks harm to consumers. Because standard setting often displaces the normal competitive process with the collective decision-making of competitors, preserving the integrity of the standard-setting process is central to ensuring standard setting works to the benefit of, rather than against, consumers.[3] The Commission's action today does just that.

As explained in the Commission's unanimous filings before the United States International Trade Commission in June 2012, the threat of injunctive relief "in matters involving RAND-encumbered SEPs, where infringement is based on implementation of standardized technology, has the potential to cause substantial harm to U.S. competition,

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[1] The licensing obligation in this matter was a FRAND obligation, although RAND (reasonable and non-discriminatory) licensing obligations raise similar issues.

[2] *See In re Dell Computer Corp.*, 121 F.T.C. 616 (1996); *In re Union Oil Company of California,* 2004 FTC LEXIS 115 (July 7, 2004)*; In re Rambus, Inc.,* Dkt. No. 9302, 2006 FTC LEXIS 101 (Aug. 20, 2006), *rev'd*, *Rambus Inc. v. F.T.C.,* 522 F.3d 456 (D.C. Cir. 2008); *In re Negotiated Data Solutions LLC*, FTC File No. 051-0094, Decision and Order (Jan. 23, 2008), *available at* http://www.ftc.gov/os/caselist/0510094/080122do.pdf.

[3] *See, e.g., Allied Tube & Conduit Corp. v. Indian Head, Inc*., 486 U.S. 492, 500-01 (1988) (noting that "private standard-setting associations have traditionally been objects of antitrust scrutiny" because of their potential use as a means for anticompetitive agreements among competitors).

consumers and innovation."[4] By threatening to exclude standard-compliant products from the marketplace, a SEP holder can demand and realize r

SPX committed to license its SEPs on FRAND terms. In doing so, we have reason to believe SPX voluntarily gave up the right to seek an injunction against a willing licensee. Moreover, the fact that both the federal courts and the ITC have the authority to deny injunctive relief where the SEP holder has broken its FRAND commitment does not mean that this conduct is not itself a violation of Section 5 or within our reach.

We also take issue with Commissioner Ohlhausen's suggestion that the Commission's action is "devoid of regulatory humility." The Commission is first and foremost a law