

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

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| In the Matter of) | |
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| ZF Friedrichshafen AG,) | |
| a corporation; and,) | |
|) | Docket No. C-4520 |
|) | |
| TRW Automotive Holdings Corp.,) | |
| a corporation.) | |
|) | |
| _____) | |

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent ZF Friedrichshafen AG (“ZF”) of Respondent TRW Automotive Holdings Corp. (“TRW”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following order:

in traditional paper format, by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media.

- F. "Commission" means the Federal Trade Commission.
- G. "Contracts" means all real and personal property leases, software licenses, Intellectual Property licenses, warranties, guaranties, insurance agreements, employment contracts, all contracts of any kind relating to construction, customer contracts, sales contracts, supply agreements, utility contracts, collective bargaining agreements, confidentiality agreements, non-disclosure agreements, and contracts or agreements of any kind.
- H. "DAS" means 100% of the shares of TRW - DAS a.s., a joint stock company, which company owns all of Respondents' rights, title, and interests in the Facility Assets: 14 - (b) (5) - (D)

as purchasing, sales and marketing support activities, undertaken at Hansa Allee 190, Düsseldorf, Rheinland-Pfalz, 40547, Germany;

Provided, however, Düsseldorf Design, Engineering & Sales Support excludes any Facility Assets related to products other than L&S Components.

N. “Düsseldorf Lease” means an agreement for the Acquirer to lease upon commercially

Respondent shall provide a financial benefit (without the option to purchase additional TRW stock) to the TRW Employee of substantially equivalent economic value.

- P. “Excluded Intellectual Property” means:
1. All Intellectual Property that has not been used or planned to be used by the TRW L&S Business since January 1, 2014; and,
 2. All Trademarks, including, without limitation, the TRW trademark.
- Q. “Facility Assets” means:
1. All real property interests, including rights, title, and interests in and to owned or leased property (subject to the terms of such lease agreements), together with all easements, rights of way, buildings, improvements, and appurtenances;
 2. All applicable federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, necessary for the operations of, and conduct of business at, such applicable facility, to the extent held by Respondents and with respect to which the transfer thereof is permitted by law, provided, however, that Respondents shall cooperate with the Acquirer and reasonably assist the Acquirer in securing any federal, state, and local regulatory agency registrations, permits, and applications whose transfer is not permitted by law; and
 3. All fixtures, equipment, machinery, tools, vehicles, personal property, or tangible property of any kind located at such applicable facility that is owned or leased by Respondents, or that Respondents have the legal right to use, or to have the custody or control of (but subject to the terms of such lease or use agreements), that is used in the TRW L&S Business.
- R. “Governmental Entity” means any federal, provincial, state, county, local, or other political subdivision of the United States, any European country, or any other country, or any department or agency thereof.
- S. “Hold Separate Order” means the Order to Hold Separate and Maintain Assets (including any modifications thereto) issued by the Commission in this matter.
- T. “Hold Separate Monitor” means the Person approved by the Commission to serve as a

together with all translations, adaptations, derivations, and combinations thereof, and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (iv) all copyrightable works, all registered and unregistered copyrights in both published works and unpublished works, and all applications, registrations, and renewals in connection therewith; (v) all computer software (including source code, executable code, data, databases, and related documentation); (vi) all advertising and promotional materials; and (vii) all rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.

V. “Inventories” means:

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radius rods. For purposes of this Decision and Order, L&S Components includes I-shafts but only I-shafts for heavy vehicles manufactured at the Portland Facility.

- Y. “Know-how” means know-how, trade secrets, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development and other similar information.
- Z. “Krefeld-Gellep Facility” means all of Respondents’ rights, title, and interests in the Facility Assets:
1. Located at the real property described in Exhibit 2 to this Decision and Order; and,
 2. Relating to the research, engineering, manufacture, marketing, and sale of L&S Components in North America and Europe by TRW.
- AA. “Material Confidential Information” means any material non-public information relating to the TRW L&S Business either prior to or after the Divestiture Date, including, but not limited to, business and strategic plans, customer or supplier lists, customer or supplier contract terms, historical information about sales to customers or purchases from suppliers, manufacturing costs, price lists, marketing methods, patents, technologies, processes, or other trade secrets, relating to the TRW L&S Business and:
1. Obtained by Respondents prior to the Divestiture Date; or,
 2. Obtained by Respondents after the Divestiture Date, in the course of performing Respondents’ obligations under any Divestiture Agreement or the Hold Separate Order;
- Provided, however,* that Material Confidential Information shall not include:
1. Information that is in the public domain when received by Respondents;
 2. Information that is not in the public domain when received by Respondents and thereafter becomes public through no act or failure to act by Respondents;
 3. Information that Respondents develop or obtain independently, without violating any applicable law or this Order, and without breaching any confidentiality obligation with respect to the information; and,
 4. Information that becomes known to Respondents from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.
- BB. “Order Date” means the date upon which this Order was issued by the Commission.
- CC. “Patent” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Effective Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, restorations, extensions, and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international

treaties and conventions, and all rights to obtain and file for patents and registrations thereto.

- DD. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Governmental Agency, and any subsidiaries, divisions, groups, or affiliates thereof.
- EE. “Portland Facility” means all of Respondents’ rights, title, and interests in the Facility Assets:
1. Located at the real property described in Exhibit 3 to this Decision and Order; and,
 2. Relating to the research, engineering, manufacture, marketing, and sale of L&S Components in North America and Europe by TRW.
- FF. “Required Inputs” means any raw materials or partially machined parts used in the research, development, manufacture, or production of any one or more of the L&S Components that TRW has researched, engineered, manufactured, marketed or sold at any time since January 1, 2014 if the substitution of such inputs with new materials or the source of supply of such inputs would:
1. Render any L&S Components non-conforming with, in breach of, or otherwise unacceptable under any Contract with any customer; or,
 2. Provide any customer with the right to examine, test, or otherwise qualify any L&S Components prior to accepting L&S Components made with substituted raw material inputs or partially machined parts, or made with such inputs from a substituted source of supply.
- GG. “Retained Tillsonburg Facility” means the Facility Assets located at 101 Spruce St., Tillsonburg, Ontario, N4G 4J1, Canada.
- HH. “St. Catharines Facility” means all of Respondents’ rights, title, and interests in the Facility Assets:
1. Located at the real property described in Exhibit 4

- WW. “TRW L&S Inventories” means all Inventories in which the TRW L&S Business owns a legal or equitable interest and which the TRW L&S Business has not yet sold to customers, including TRW, as of the Divestiture Date.
- XX. “TRW Workforce Employees” means all part-time and full-time employees of the TRW L&S Business who are paid hourly or by salary, but excluding the TRW Key Employees.

II.

IT IS FURTHER ORDERED that:

- A. No later than six (6) months from the ACCO Execution Date, Respondents shall divest the TRW L&S Business, absolutely and in good faith and at no minimum price, to an Acquirer who receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- B. At the option of the Acquirer, and subject to the prior approval of the Commission, Respondents shall include in the Divestiture Agreement:
1. The Dusseldorf Lease;
 2. A Transition Services Agreement relating to the TRW L&S Business for a term of up to two (2) years, which agreement may be terminated at any time by the Acquirer without penalty upon commercially reasonable notice to Respondents;
 3. A Transition Required Input Supply Agreement:
 - a. For an initial term of up to one (1) year; and,
 - b. At the option of the Acquirer, for an additional term that is the greater of (i) one (1) year, or (ii) the time the Acquirer estimates in its reasonable judgment is required to examine, test or otherwise qualify L&S Components made with substituted raw material inputs or partially machined parts or made from such inputs from a substituted source of supply;

provided, however, that such additional term shall not exceed one (1) year without the prior approval of the Commission, which approval shall be sought no later than forty five (45) days prior to the expiration of the initial term; and,
 - 4.

G. Respondents shall comply with all terms of the Divestiture Agreement, and any breach by

attempt to persuade any one or more of the TRW Employees to decline any offer of employment from the Acquirer, or offer any incentive to any TRW Employees to decline employment with the Acquirer; (ii) irrevocably waive any legal or equitable right to deter any TRW Emp

IV.

IT IS FURTHER ORDERED that:

A.

4. To provide legal services associated with actual or potential litigation and transactions;
5. To monitor and ensure compliance with financial, tax reporting, governmental environmental, health, and safety requirements; or,
6. As otherwise provided by this Order and the Hold Separate.

V.

IT IS FURTHER ORDERED that:

A.

7. During the term of any Dusseldorf Lease, Transition Services Agreement, Transition Required Input Supply Agreement or Transition Trademark Assistance Agreement, the Monitor shall provide the Commission with written reports at least every sixty (60) days sufficient to determine if Respondents are complying fully with the terms of any Dusseldorf Lease, Transition Services Agreement, Transition Required Input Supply Agreement or Transition Trademark Assistance Agreement, and with the terms of this Order (including the Divestiture Agreement). Thereafter, the Monitor shall provide periodic written reports to the Commission upon a schedule (but at least annually) that is sufficient to provide the Commission with timely information to determine if Respondents have complied and are complying with their obligations under this Order (including the Divestiture Agreements). In addition, the Monitor shall provide such additional written reports as Commission staff may request that reasonably are related to determining if Respondents have complied and are complying with their obligations under this Order (including the Divestiture Agreements). The Monitor shall not provide to Respondents, and Respondents shall not be entitled to receive, copies of these reports.
- D. Respondents shall grant and transfer to the Monitor, and such Monitor shall have, all rights, powers, and authority necessary to carry out the Monitor's duties and responsibilities, including, but not limited to, the following:
1. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with Paragraphs II. through IV. of this Order and with the Divestiture Agreement;
 2. Subject to any demonstrated legally recognized privilege, Respondents shall provide the Monitor full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under Paragraphs II. through IV. of this Order and with the Divestiture Agreement;
 3. Within five (5) calendar days of submitting a report required by this Order or the Consent Agreement to the Commission, Respondents shall deliver a copy of such report to the Monitor;
 4. Except as otherwise set forth in this Order, the Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions to which the Monitor and Respondents agree and that the Commission approves;
 5. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in

Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.

- C. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of any Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.
- E. The Divestiture Trustee appointed pursuant to this Paragraph VI. may be the same person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate, and may be the same Person as the Monitor appointed under this Order.

maintains or claims (regardless of whether Respondents agree or disagree with such Person, and regardless whether a judicial or arbitration action has been threatened or commenced) that one or more Respondents have failed to comply fully with either any Transition Services Agreement or Transition Required Input Supply Agreement, briefly describe the Person's claim, and provide copies of any written communications between Respondents and the Person concerning the claim.

- C. On the first anniversary of the Order Date, and thereafter on each subsequent anniversary until Respondents have satisfied in full all of their obligations under Paragraph II of this Order and all of the Divestiture Agreement (including any Transition Services Agreement and Transition Required Input Supply Agreement), Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. For the period covered by each such report, Respondents shall state the name and contact information for each Person that maintains or claims (regardless of whether Respondents agree or disagree with such Person, and regardless whether a judicial or arbitration ac

- A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of the Respondents; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel
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CONFIDENTIAL APPENDICES A-E
[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX F
MONITOR AGREEMENT
[Public Record Version]