



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 constitute a global business of SPX Corporation. The global SPX Service Solutions business includes: (i) providing vehicle repair and maintenance solutions, including diagnostic products, services and dealer equipment, technical information, tools and equipment, daily sale and air conditioning (including Robinair-brand ACRRRs) and fluids to automotive original equipment manufacturers, OEM dealers and the aftermarket; and, (ii) tungsten carbide machining, ceramic machining and machining other hard exotic material to specification. SPX Service Solutions had 2011 sales of approximately \$927 million.

4. The ultimate parent entity of SPX Service Solutions is SPX Corporation. SPX Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters located at 13515 Ballantyne Corporate Place, Charlotte, NC 28277. SPX Corporation is a diversified global supplier of highly engineered products for the following industries: power and energy, food and beverage, vehicle and transit, infrastructure and industrial processes with 2011 revenues of over \$5 billion. The company employs over 18,000 people.

## **III. THE PROPOSED ACQUISITION**

5. On January 23, 2012, Respondent entered into a Purchase and Sale Agreement (“the Acquisition Agreement”) with SPX Corporation whereby Respondent proposes to acquire substantially all assets and legal entities that comprise the SPX Service Solutions business. The transaction is valued at \$1.15 billion (“the Acquisition”).

## **IV. THE RELEVANT MARKET**

6. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of ACRRRs used for the repair of motor vehicle air conditioning systems (“MVACs”). ACRRRs, including add-ons and accessories, are used to repair malfunctioning MVACs by recovering and recycling the refrigerant, and then recharging the MVACs.

7. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

## **V. STRUCTURE OF THE MARKET**

8. The market for ACRRRs in the United States is highly concentrated. Bosch and SPX Service Solutions are currently the two most significant participants in the ACRRR market in the United States, as measured by the Herfindahl-Hirschman Index (“HHI”). Post-Acquisition, Bosch would control over 90% of the relevant market, combining Bosch’s approximate 10% market share with SPX Service Solutions’s market share of over 80%. Four other firms comprise the balance of sales in the United States.

## **VI. ENTRY CONDITIONS**

9. Entry into the relevant market is not likely to occur in a timely manner sufficient to deter or counteract the anticompetitive effects of the Acquisition. The most significant barriers to entry into the relevant market are (1) building a sufficient national network of after-sale service centers to provide rapid-turnaround repair services for equipment when repairs are required, and (2) obtaining sufficient access and visibility in the relevant distribution channels. In addition, ACRRRs must be in compliance with standards established by SAE International, an industry standard-setting organization. Such compliance may involve potentially costly licensing of standard-essential patents. SAE also requires ACRRR market participants to manufacture multiple ACRRR prototypes for testing by independent testing facilities, a requirement that adds manufacturing costs. For these reasons, an entrant is unlikely to achieve a significant market impact within two years to counteract or deter any anticompetitive effects of the Acquisition.

## **VII. EFFECTS OF THE ACQUISITION**

10. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant market in 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, by eliminating actual, direct, and substantial competition between Bosch and SPX Service Solutions in the ACRRR market, thereby (1) increasing the likelihood that Bosch will be able to exercise unilateral market power in this market, and (2) increasing the likelihood that customers would be forced to pay higher prices.

## **VIII. CONDUCT**

11. The United States Environmental Protection Agency (“EPA”) regulates the refrigerants used in MVACs. Section 608 of the Clean Air Act Amendments of 1990 directs EPA to establish requirements to prevent the release of ozone-depleting substances during the servicing, repair, or disposal of appliances and industrial process refrigeration. The repair of MVACs is regulated under section 609 of the Clean Air Act.

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 practicing either the SAE J-2788 or J-2843 standards, SPX Service Solutions would license these patents to applicants, on a claim-by-claim basis, as required for compliance with the SAE J-2788 and J-2843 standards, under reasonable terms and conditions that are demonstrably free of any unfair discrimination. SPX Service Solutions has not provided SAE with a list of all patents and patent applications that may be essential to the implementation of SAE J-2788 and SAE J-2843.

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 CONSIDERED**, the Federal Trade Commission on this twenty-first day of November, 2012, issues its Complaint against said Respondent.

By the Commission, Commissioner Rosch and Commissioner Ohlhausen dissenting.

Donald S. Clark  
Secretary

SEAL: