ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of ZF Friedrichshafen AG and TRW Automotive Holdings Corp., File Number 141-0235

INTRODUCTION

The Federal Trade Commission ("Commission") has accepted from ZF Friedrichshafen AG ("ZF") and TRW Automotive Holdings Corp. ("TRW"), subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") designed to remedy the anticompetitive effects resulting from ZF's proposed acquisition of TRW.

Pursuant to an Agreement and Plan of Merger dated September 15, 2014, the parties agreed that ZF would acquire TRW for $105.60 per share in an all-cash deal valued at approximately $12.4 billion ("the Acquisition"). The proposed Acquisition would result in a duopoly in the heavy vehicle tie rod market. The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate 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 substantially lessening competition in the market for heavy vehicle tie rods in North America.

Under the terms of the proposed Decision and Order ("Order") contained in the Consent Agreement, the parties are required to divest TRW's Linkage and Suspension Business in a manner, and to an acquirer, that meets Commission approval. The divestiture package includes five manufacturing facilities in North America and Europe, along with related assets including intellectual property. The acquirer also has the option to enter into transitional services and supply agreements. The Consent Agreement provides an acquirer with everything needed to compete effectively in the North American heavy vehicle tie rod market. The parties must complete the divestiture within six months of executing the Consent Agreement.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

THE PARTIES

Headquartered in Friedrichshafen, Germany, ZF is a privately held global automotive and industrial products manufacturer. ZF makes light and heavy vehicle components for the powertrain, chassis, and driveline. ZF designs, manufacturers, and sells heavy vehicle tie rods, amongst several other products, in its chassis division.

Headquartered in Livonia, Michigan, TRW sells chassis systems, electronic systems, passive occupant safety systems, and other automotive components. Like ZF, TRW designs, manufactures, and sells heavy vehicle tie rods.

THE RELEVANT PRODUCT AND MARKET STRUCTURE

The relevant line of commerce in which to analyze the effects of the Acquisition is heavy vehicle tie rods. A heavy vehicle is generally defined as one that weighs six tons or more, and a tie rod is a rigid connecter that links a vehicle's individual wheels with the steering control mechanism. Customers and other market participants did not identify any substitutes for heavy vehicle tie rods.

North America is the relevant geographic market in which to analyze the effects of the Acquisition on the heavy vehicle tie rod market. The size and weight of heavy vehicle tie rods generally make it uneconomical to ship them long distances. Customers interviewed primarily consider manufacturers in North America, and have found more distant firms uncompetitive for reasons including: 1) price; 2) logistics; and 3) quality. Therefore, North America is the relevant geographic market.

The market for heavy vehicle tie rods in North America is highly concentrated. It is served primarily by ZF, TRW, and USK Internacional S.A. DE C.V. ("Urresko"). These three firms have a share of nearly 99% of the market based on unit sales. The merger would reduce the number of competitors from three to two, and increase the Herfindahl-Hirschman Index from 4,218 to 5,046, an increase of 828.

ENTRY

Entry into the North American heavy vehicle tie rod market is not likely to deter or counteract any anticompetitive effects of the proposed Acquisition. Entry is unlikely in light of the relatively small market size, strong position of incumbents, high capital costs, switching costs, and knowledge barriers that exist. The parties did not identify any likely entrants, and those firms best situated for entry – manufacturers of related heavy vehicle components – expressed no interest in entering the North American heavy vehicle tie rod market.

EFFECTS OF THE ACQUISITION

The proposed Acquisition would increase the likelihood of coordinated interaction among the remaining competitors in the North American heavy vehicle tie rod market. The combined company would have only one remaining significant competitor in North America, Urresko. Reducing the number of competitors from three to two would eliminate much uncertainty and make it easier for the remaining firms to reach agreement on terms of coordination, whether the coordination focuses on customer allocation, price, or some other aspect of competition.

Additionally, the proposed Acquisition would eliminate direct competition between ZF and TRW, resulting in the increased probability that customers would pay higher prices for heavy vehicle tie rods. In the past, customers have been able to use competition between ZF and TRW to obtain better prices by obtaining competing bids. Customers have also switched between ZF and TRW. That competition would be lost absent the merger.

THE CONSENT AGREEMENT

The Consent Agreement eliminates the competitive concerns raised by ZF's proposed acquisition of TRW by requiring the parties to divest TRW's North American and European Linkage and Suspension Business ("the L&S Business"). The proposed divestiture includes everything needed for an acquirer to compete effectively in the North American market for heavy vehicle tie rods, and also includes additional products that ensure the business will be viable. Given the robust nature of the divested business, the Commission is confident that a post-order divestiture is sufficient to protect its interest in restoring competition.

Pursuant to the Order, the parties are required, no later than six months from execution of the Consent Agreement, to divest the L&S Business to a Commission-approved acquirer. That business consists of both heavy and light vehicle components, and includes – in addition to tie rods – control arms, ball joints, stabilizer links, conventional steering linkages, drag links, V-links, radius rods, and I-shafts. The divestiture buyer will receive all rights and assets relating to the L&S Business, including five TRW manufacturing facilities, Portland (US), Tillsonburg-Plant 2 (Canada), St. Catharines (Canada), Dacice (Czech Republic), and Krefeld-Gellep (Germany), as well as leased space previously occupied by L&S research and development at TRW's Dusseldorf Tech Center. The divested assets also include intellectual property rights as well as all books, records, and confidential business information related to the L&S Business.

To ensure that the divestiture is successful, the Order requires the parties to provide transition services such as logistical and administrative support at the option of the acquirer. Moreover, the acquirer will have the option to enter into a transition supply agreement with the parties for key manufacturing inputs necessary to perform existing customer contracts. The Consent Agreement also includes other standard terms designed to ensure the viability of the divestiture, including requirements that the parties assist the acquirer in hiring the existing work force of the business, and refrain from soliciting those employees for up to two years.

Given the robustness of the divested business and the protections contained in the Order, the Commission is confident that a post-order divestiture will be sufficient to preserve competition. The L&S Business has been run largely as a standalone business within TRW, and potential buyers have confirmed that the divested assets include everything necessary to compete effectively as a viable business. Similarly, potential customers have confirmed that an acquirer of the L&S Business would be a workable option as a supplier.

To ensure compliance with the Order, the Commission will appoint an Interim Monitor to oversee ZF's and TRW's performance of their obligations pursuant to the Consent Agreement, and to keep the Commission informed about the status of the divestiture. The Order also allows the Commission to appoint a Divestiture Trustee to accomplish the divestiture if the parties fail to divest within the required timeframe. Lastly, the Consent Agreement contains standard reporting requirements and terminates in ten years.

The Commission has also issued an Order to Hold Separate and Maintain Assets to protect the assets until they are divested. During the hold separate period, the parties must fund the business' operations, including capital projects, according to existing plans. To ensure compliance with the Hold Separate Order, a Commission-approved Hold Separate Monitor will oversee the L&S Business during the interim period.

OPPORTUNITY FOR PUBLIC COMMENT

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.