

Order to 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 to Maintain Assets (“Asset Maintenance Order”).

1. Respondent Bosch is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its principal U.S. subsidiary, Robert Bosch LLC, a limited liability company organized, existing and doing business under the laws of the State of Delaware with its headquarters located at 38000 Hills Tech Drive, Farmington MI 48331.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that all capitalized terms used in this Asset Maintenance Order, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order contained in the Consent Agreement. In addition to the definitions in Paragraph I of the Decision and Order attached to the Consent Agreement, the following definitions shall apply:

A. “Decision and Order” means:

1. the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
2. the Final Decision and Order issued and served by the Commission.

B. “Orders” means the Decision and Order and this Asset Maintenance Order.

II. (Consents)

IT IS FURTHER ORDERED that prior to the Divestiture Date, Respondent Bosch shall secure all consents, assignments, and waivers from all Third Parties that are required for the Acquirer to manufacture and sell the Bosch ACRRR Products as of the Divestiture Date including, but not limited to, securing a lease for the York, Pennsylvania Facility, if such facilities are being leased to the Acquirer, and securing consents from all customers of the Bosch ACRRR Business whose contracts are being assigned or extended to the Acquirer pursuant to Paragraph II.A of the Decision and Order.

PROVIDED, HOWEVER, Respondent Bosch may satisfy this requirement with respect to any one or more leases or agreements by certifying that the Acquirer has executed such relevant agreements directly with each of the relevant Third Parties.

III. (Asset Maintenance)

IT IS FURTHER ORDERED that:

- A. From the date Respondent Bosch signs the Consent Agreement, Respondent Bosch shall appoint an executive responsible for overseeing and maintaining the Bosch ACRRR Business to be the primary contact between Respondent Bosch, Commission staff, and the Monitor. Respondent Bosch shall have such executive continue the oversight and maintenance of Bosch ACRRR Business until the Divestiture Date.
- B. During the time period before the Divestiture Date, Respondent Bosch shall, except as otherwise provided in the Orders:
 - 1. take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business to minimize any risk of loss of competitive potential for the Bosch ACRRR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bosch ACRRR Business, except for ordinary wear and tear. Respondent Bosch shall not sell, transfer, encumber or otherwise impair the Bosch ACRRR Business (other than in the manner prescribed in the Orders), nor take any action that lessens the full economic viability, marketability or competitiveness of the Bosch ACRRR Business including, but not limited to, hiring or offering to hire any Designated Employees;
 - 2. retain all of Respondent Bosch's rights, title, and interest in the Bosch ACRRR Business, except for the disposition of inventory in the regular and ordinary course of business, consistent with past practices;
 - 3. maintain the operations of the Bosch ACRRR Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Bosch ACRRR Business and shall use its best efforts to preserve the existing relationships with the following: car manufacturers, suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the Bosch ACRRR Business including, but not limited to, continuing the homologation process for the Bosch ACRRR Products. Respondent Bosch's responsibilities shall include, but are not limited to, the following:

- a. Respondent Bosch shall provide the Bosch ACRRR Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Bosch ACRRR Business;
 - b. Respondent Bosch shall continue, at least at their scheduled pace, any additional expenditures for the Bosch ACRRR Business authorized prior to the date the Consent Agreement was signed by Respondent Bosch including, but not limited to, all research, Development, manufacture, distribution, marketing and sales expenditures;
 - c. Respondent Bosch shall provide such resources as may be necessary to respond to competition against the Bosch ACRRR Business and/or to prevent any diminution in sales of the Bosch ACRRR Business, world-wide, after the Acquisition Date and prior to the Divestiture Date including the maintenance of the homologation process for the Bosch ACRRR Products worldwide;
 - d. Respondent Bosch shall provide such resources as may be necessary to maintain the competitive strength and positioning of the Bosch ACRRR Business in a business-as-usual manner and/or in accordance with the applicable Bosch ACRRR Business plan;
 - e. Respondent Bosch shall make available for use by the Bosch ACRRR Business funds in a business-as-usual manner and/or in accordance with the applicable Bosch ACRRR Business plan sufficient to perform all routine maintenance or replacement, and all other maintenance or replacement of assets as may be necessary to maintain the Bosch ACRRR Business;
 - f. Respondent Bosch shall provide the Bosch ACRRR Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business; and
 - g. Respondent Bosch shall provide such support services to the Bosch ACRRR Business as were being provided to such business by Respondent Bosch as of the date the Consent Agreement was signed by Respondent Bosch.
4. maintain a work force substantially as large as, and with training and expertise equivalent to or better, what was associated with the Bosch ACRRR Business as of the Acquisition Date including, but not limited to, instructing Respondent Bosch's Distributors to maintain a work force substantially as large as, and with training and expertise equivalent to or better, what was associated with the Bosch ACRRR Business as of the Acquisition Date.

5. develop, sell, participate in the homologation process, and manufacture the Bosch ACRRR Product consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Bosch ACRRR Business pending divestiture.
- C. The purpose of this Paragraph III is to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business until the Divestiture Date, to minimize any risk of loss of competitive potential for the Bosch ACRRR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bosch ACRRR Business, except for ordinary wear and tear.

IV. (Confidentiality)

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Asset Maintenance Order becomes final, or until the Decision and Order becomes final, whichever ever is earlier:

- A. Except in the course of performing its obligations under a Remedial Agreement, or as expressly allowed pursuant to the Orders, after the Divestiture Date:
1. Respondent Bosch shall not seek, receive, obtain, use, share or otherwise have or grant access to, directly or indirectly, any Confidential Business Information from or with any Person. Among other things, Respondent Bosch shall not use such Confidential Business Information:
 - a. to assist or inform Respondent Bosch employees who Develop, manufacture, solicit for sale, sell, or service Respondent Bosch products that compete with the products divested, sold, or distributed pursuant to the Orders including, but not limited to, the employees of the ACRRR business owned and operated by SPX SS;
 - b. to interfere with any suppliers, distributors, resellers, or customers of the Acquirer;
 - c. to interfere with any contracts divested, assigned, or extended to the Acquirer pursuant to the Decision and Order; or
 - d. to interfere in any other way with the Acquirer pursuant to the Orders or with the Bosch ACRRR Business divested pursuant to the Decision and Order.
 2. Respondent Bosch shall not disclose or convey Confidential Business Information, directly or indirectly, to any person except the Acquirer or other persons specifically authorized by the Acquirer to receive such information;

3. Respondent Bosch shall not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information to the employees associated with the SPX SS ACRRR Products; and
 4. Respondent Bosch shall institute procedures and requirements to ensure that:
 - a. Respondent Bosch employees with access to Confidential Business Information do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of the Orders; and
 - b. Respondent Bosch employees associated with the SPX SS ACRRR Products do not solicit, access or use any Confidential Business Information that they are prohibited under the Orders from receiving for any reason or purpose.
- B. The requirements of this Paragraph IV do not apply to Confidential Business Information that Respondent Bosch demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:
1. was or becomes generally available to the public other than as a result of a disclosure by Respondent Bosch;
 2. is necessary to be included in mandatory regulatory filings; *PROVIDED, HOWEVER*, that Respondent Bosch shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
 3. was available, or becomes available, to Respondent Bosch on a non-confidential basis, but only if, to the knowledge of Respondent Bosch, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 4. is information the disclosure of which is consented to by the Acquirer;
 5. is necessary to be exchanged in the course of consummating the Acquisition or the transactions under the Remedial Agreement;
 6. is disclosed in complying with the Orders;
 7. is information the disclosure of which is necessary to allow Respondent Bosch to comply with the requirements and obligations of the laws of the United States and other countries;
 8. is disclosed in defending legal claims, investigations or enforcement actions threatened or brought against Respondent Bosch or the Bosch ACRRR Business; or
 9. is disclosed in obtaining legal advice.

- C. The purpose of this Paragraph IV is to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business until the Divestiture Date, to minimize any risk of loss of competitive potential for the Bosch ACRRR Business, to minimize the risk of disclosure and unauthorized use of Confidential Business Information of the Bosch ACRRR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bosch ACRRR Business, except for ordinary wear and tear.

V. (Monitor)

IT IS FURTHER ORDERED that:

- A. Mr. Charles Johnson of BC Partners, LLC, shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent Bosch and attached as Appendix A (“Monitor Agreement”) and Confidential Appendix A-1 (“Monitor Compensation”). The Monitor is appointed to assure that Respondent Bosch expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders.
- B. The Monitor Agreement shall require that, no later than one (1) day after the Acquisition Date, Respondent Bosch transfers to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Orders, and consistent with the purposes of the Orders.
- C. No later than one (1) day after the Acquisition Date, Respondent Bosch shall, pursuant to the Monitor Agreement, transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to and consistent with, the purposes of the Orders.
- D. Respondent Bosch shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondent Bosch’s compliance with the terms of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission including, but not limited to:
 - a. Assuring that Respondent Bosch expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders; and
 - b. Monitoring any agreements between Respondent Bosch and the Acquirer.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Bosch's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, Related to Respondent Bosch's compliance with its obligations under the Orders. Respondent Bosch 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 Respondent Bosch's compliance with the Orders.
 4. The Monitor shall serve, without bond or other security, at the expense of Respondent Bosch on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Bosch, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
 5. Respondent Bosch shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Monitor.
 6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent Bosch of its obligations under the Orders.
 7. Respondent Bosch may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:

1. The Commission shall select the substitute Monitor, subject to the consent of Respondent Bosch, which consent shall not be unreasonably withheld. If Respondent Bosch has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Bosch of the identity of any proposed Monitor, Respondent Bosch shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than ten (10) days after appointment of the substitute Monitor, Respondent Bosch shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Bosch's compliance with the relevant terms of the Orders in a manner consistent with the purposes of the Orders.
- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- H. A Monitor appointed pursuant to this Asset Maintenance Order may be the same person appointed as the Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

VI. (Employees)

IT IS FURTHER ORDERED that:

- A. Beginning no later than the time Respondent Bosch signs the Consent Agreement in this matter until ninety (90) days after the Divestiture Date:
1. Respondent Bosch shall provide the applicable Designated Employees with reasonable financial incentives to continue in their positions for such period. Such incentives shall include a continuation of all employee benefits offered by Respondent Bosch until the Designated Employee has been hired, the Acquirer has decided not to hire such Designated Employee, or the Designated Employee has declined, in writing, the Acquirer's offer, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to transition the Bosch ACRRR Business to the Acquirer;
 2. Respondent Bosch shall not interfere with the interviewing, hiring, or employing of the Designated Employees by the Acquirer as described in the Orders, and shall remove any impediments within the control of Respondent Bosch that may deter, or otherwise prevent or discourage the Designated Employees from accepting employment with the Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Bosch that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondent Bosch shall not

make any counteroffer to a Designated Employee who receives a written offer of employment from the Acquirer, unless and until the Designated Employee has declined, in writing, the Acquirer's offer.

3. Respondent Bosch shall, in a manner consistent with local labor laws:
 - a. facilitate employment interviews between each Designated Employee and the Acquirer including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the Acquirer and shall not discourage such employee from participating in such interviews;
 - b. not interfere in employment negotiations between each Designated Employee and the Acquirer;
 - c. and with respect to each Designated Employee who receives an offer of employment from the Acquirer:
 - (1) not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the Designated Employee from being employed by the Acquirer, and shall not offer any incentive to the Designated Employee to decline employment with the Acquirer including, but not limited to, the Acquirer offering to hire the Designated Employee;
 - (2) cooperate with the Acquirer in effecting transfer of the Designated Employee to the employ of the Acquirer, if the Designated Employee accepts an offer of employment from the Acquirer;
 - (3) eliminate any confidentiality restrictions that would prevent the Designated Employee who accepts employment with the Acquirer from using or transferring to the Acquirer any information relating to the manufacture and sale of the Bosch ACRRR Product; and
 - (4) unless alternative arrangements are agreed upon with the Acquirer, retain the obligation to pay the benefits of any Designated Employee who accepts employment with the Acquirer including, but not limited to, all accrued bonuses, vested pensions, and other accrued benefits.

PROVIDED, HOWEVER, that subject to the conditions of continued employment prescribed in the Orders, this Paragraph VI.A. shall not prohibit Respondent Bosch from continuing to employ any Designated Employee under the terms of such employee's employment as in effect prior to the date of the written offer of employment from the Acquirer to such employee.

- B. Respondent Bosch shall not, for a period of two (2) years following the Divestiture Date, directly or indirectly, solicit, induce, or attempt to solicit or induce any Acquirer employee, who is employed by the Acquirer to terminate his or her employment relationship with the Acquirer.

PROVIDED, HOWEVER, Respondent Bosch may place general advertisements for or conduct general searches for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Acquirer's employees;

PROVIDED FURTHER, HOWEVER, Respondent Bosch may hire Designated Employees who apply for employment with Respondent Bosch as long as such employees were not solicited by Respondent Bosch in violation of this Paragraph.

VII. (Compliance Reports)

IT IS FURTHER ORDERED that within thirty (30) days after the date this Asset Maintenance Order becomes final, and every sixty (60) days thereafter until the Asset Maintenance Order terminates, Respondent Bosch shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Asset Maintenance Order and the related Decision and Order; *PROVIDED, HOWEVER*, that, after the Decision and Order in this matter becomes final, the reports due under this Asset Maintenance Order shall be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent Bosch pursuant to the Decision and Order.

VIII. (Reorganization)

IT IS FURTHER ORDERED that Respondent Bosch shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of such Respondent;
- B. acquisition, merger or consolidation of Respondent; or
- C. any other change in the Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

IX. (Access)

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with the Orders, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent Bosch, Respondent Bosch shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Bosch 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 Respondent Bosch Relating To compliance with the Orders, which copying services shall be provided by Respondent Bosch at its expense; and
- B. to interview officers, directors, or employees of Respondent Bosch, who may have counsel present, regarding such matters.

X. (Termination)

IT IS FURTHER ORDERED that this Asset Maintenance Order shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The later of:
 - 1. the day after the divestitures pursuant to Paragraph II of the Decision and Order are accomplished, or
 - 2. three (3) days after the related Decision and Order becomes final.

By the Commission, Commissioner Rosch and Commissioner Ohlhausen dissenting.

Donald S. Clark
Secretary

SEAL
ISSUED: November 21, 2012

APPENDIX A
MONITOR AGREEMENT

CONFIDENTIAL APPENDIX A-1

**COMPENSATION PROVISION
OF MONITOR AGREEMENT**

[Redacted From the Public Record Version, But Incorporated By Reference]