

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

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

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS**  
**[Public Record Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by ZF Friedrichshafen AG (“ZF”) of 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 as 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 had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order 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 issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent ZF Friedrichshafen AG is a stock corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business located at Friedrichshafen, Germany.
2. Respondent TRW Automotive Holdings Corp. is a public corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 12001 Tech Center Drive, Livonia, MI 48150.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED** that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Decision and Order” means:
  1. the Proposed Decision and Order contained in the Consent Agreement in this matter until issuance and service of a final Decision and Order by the Commission; and
  2. the Final Decision and Order issued and served by the Commission.
- B. “EC Decision” means Case M.7420 – ZF/TRW Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area issued on March 12, 2015.
- C. “Hold Separate Business” means the TRW L&S Business.

- D. “Hold Separate Business Employee” means any employee or agent of the Hold Separate Businesses (other than a Support Services Employee).
- E. “Hold Separate Order Date” means the date this Hold Separate Order is issued.
- F. “Hold Separate Period” means the period from the Acquisition Date until the Divestiture Date.
- G. “Orders” means the Decision and Order and this Hold Separate Order.
- H. “Support Services Employee” means any employee, agent, contractor, or consultant of Respondents performing Support Services, including, but not limited to, the Persons identified in Confidential Appendix B to this Hold Separate Order.
- I. “Support Services” means assistance with respect to the operation of the TRW L&S Business, including, but not limited to: (i) human resources and administrative services such as payroll processing and employee benefits; (ii) preparation of tax returns, environmental health and safety services; (iii) financial accounting and reporting services; (iv) legal, licensing, and audit services; (v) licensing and regulatory compliance in any jurisdiction in which it does business; (vi) maintenance and oversight of information technology systems and other computerized or electronic systems and databases; (vii) processing of accounts payable and accounts receivable; (viii) procurement services; (ix) public relations and public affairs services; (x) construction and development services; (xi) safety and security services; and (xii) procurement and renewal of insurance and related services. Support Services includes any assistance provided to the TRW L&S Business at any time within twenty four (24) months prior to the commencement of the Hold Separate Period, and in addition, any other assistance or support reasonably required during the Hold Separate Period to achieve the purposes of this Hold Separate Order and the Decision and Order.
- J. “Tillsonburg Production Line Transfer Expenditures” means all budgeted, planned, or approved expenditures and funding as of the Hold Separate Order Date that are necessary for or related to the timely completion of the transfer of the Tillsonburg Production Line as set forth in Confidential Appendix A to this Hold Separate Order.

## **II.**

**IT IS FURTHER ORDERED** that during the Hold Separate Period:

- A. Respondents shall:
1. Keep the Hold Separate Business separate, apart, and independent of Respondents' other businesses and assets as required by this Hold Separate Order and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business;
  2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, or the Hold Separate Monitor, except to the extent that Respondents must exercise direction and control over the Hold Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, the EC Decision, and all applicable laws; and
  3. Take all actions necessary to maintain and assure the continued viability, marketability, and competitiveness of the Hold Separate Business, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets of the Hold Separate Business, except for ordinary wear and tear, and shall not sell, transfer, encumber, or otherwise impair any of the assets of the Hold Separate Business or the Hold Separate Business (except as required by the Decision and Order).
- B. The purpose of this Hold Separate Order is to (1) maintain and preserve the Hold Separate Business as a viable, competitive, and ongoing business independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that no Material Confidential Information is exchanged between Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate Order; and (3) prevent interim harm to competition pending the divestiture and other relief.

## **III.**

**IT IS FURTHER ORDERED** that:

- A. The Commission appoints Competition Rx as Hold Separate Monitor to monitor and supervise the management of the Hold Separate Business and ensure that Respondents comply with their obligations under this Hold Separate Order and the Decision and Order.

- B. Respondents shall enter into the agreement with the Hold Separate Monitor, attached as Appendix C to this Hold Separate Order, that shall become effective no later than one (1) day after the date the Acquisition is completed, and that transfers to and confers upon the Hold Separate Monitor all rights, powers, and authority necessary to permit the Hold Separate Monitor to perform his or her duties and responsibilities pursuant to this Hold Separate Order in a manner consistent with the purposes of this Hold Separate Order and the Decision and Order and in consultation with Commission staff; and shall require that the Hold Separate Monitor act in a fiduciary capacity for the benefit of the Commission:
1. The Hold Separate Monitor shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by TRW Key Employees; maintaining the independence of the Hold Separate Business; and monitoring Respondents' compliance with their obligations pursuant to this Hold Separate Order and the Decision and Order.
  2. The Hold Separate Monitor shall act in a fiduciary capacity for the benefit of the Commission. Subject to all applicable laws and regulations, the Hold Separate Monitor shall have full and complete access to all personnel, books, records, documents, and facilities of the Hold Separate Business, and to any other relevant information as the Hold Separate Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. Respondents shall develop such financial or other information as the Hold Separate Monitor may reasonably request.
  3. The Hold Separate Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Monitor's duties and responsibilities.
  4. The Commission may require the Hold Separate Monitor and each of the Hold Separate Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Monitor's duties.
  5. Respondents may require the Hold Separate Monitor and each of the Hold Separate Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however*, that such agreement shall not restrict the Hold Separate Monitor from providing any information to the Commission.

6. The Hold Separate Monitor shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
  7. Respondents shall indemnify the Hold Separate Monitor and hold it harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 the Hold Separate Monitor's malfeasance, gross negligence, willful or wanton acts, or bad faith.
  8. Thirty (30) days after the date the Acquisition is completed, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order and Respondents' compliance with their obligations under the Hold Separate Order and the Decision and Order.
- C. If the Hold Separate Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order or with the EC Decision, the Commission may appoint a substitute Hold Separate Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows:
1. If Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Hold Separate Monitor within five (5) business days after notice by the staff of the Commission to Respondents of the identity of the proposed substitute Hold Separate Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor.
  2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Hold Separate Monitor, enter into an agreement with the substitute Hold Separate Monitor that, subject to the approval of the Commission, confers on the substitute Hold Separate Monitor all the rights, powers, and authority necessary to permit the substitute Hold Separate Monitor to perform, its, his, or her duties and responsibilities on the same terms and conditions as provided in Paragraph III. of this Hold Separate Order.

- D. The Hold Separate Monitor shall serve through the Hold Separate Period; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
- E. The Commission may on its own initiative or at the request of the Hold Separate Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Hold Separate Order.

#### IV.

**IT IS FURTHER ORDERED** that:

- A. Respondents shall cooperate with, and take no action to interfere with or impede the ability of: (i) the Hold Separate Monitor, (ii) any Hold Separate Business Employee, or (iii) any Support Services Employee, to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order and the Decision and Order.
- B. Respondents shall continue to provide, or offer to provide, Support Services and Required Inputs to the Hold Separate Business as were being provided to the Hold Separate Business by Respondents as of the Date of the Merger Agreement;
  - 1. For Support Services and Required Inputs that Respondents provided to the Hold Separate Business as of the Date of the Merger Agreement, Respondents may charge no more than the same price, if any, charged by Respondents for such Support Services and Required Inputs as of the Date of the Merger Agreement;
  - 2. For any other Support Services and Required Inputs that Respondents may provide to the Hold Separate Business, Respondents may charge no more than Respondents' Direct Cost for the same or similar Support Services or Required Inputs; and
  - 3. Notwithstanding the above, the Hold Separate Business shall have, in consultation with the Hold Separate Monitor, the ability to acquire Support Services or Required Inputs from Persons other than Respondents.
  - 4. Notwithstanding the above, Respondents' obligation to provide Support Services to the Hold Separate Business shall not include the provision of legal services in Germany to the extent that the provision of such services is not permitted by law.

- C. Respondents shall not permit:
1. Any of its employees, officers, agents, or directors, other than (i) any Hold Separate Employees, and (ii) any Support Services Employees, to be involved in the operations of the Hold Separate Business, except to the extent otherwise provided in this Hold Separate Order.
  2. Any Hold Separate Employee to be involved, in any way, in the operations of Respondents' businesses other than the Hold Separate Business.
- D. Respondents shall provide the Hold Separate Business with sufficient financial and other resources as may be required to fulfill Respondents' obligations and responsibilities under the Orders, and as may reasonably be requested by the Hold Separate Monitor, to:
1. Operate the Hold Separate Business as it was operated as of the Date of the Merger Agreement (including efforts to generate new business) consistent with the practices of the Hold Separate Business in place prior to the Date of the Merger Agreement;
  2. Perform all maintenance to, and replacements or remodeling of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice and with current plans;
  3. Carry on such capital projects, physical plant improvements, and business plans (including, but not limited to, the Tillsonburg Production Lines as set forth in Confidential Appendix A to this Hold Separate Order) as are already under way or planned for which all necessary regulatory and legal approvals have been obtained, including, but not limited to, existing or planned renovation, remodeling, and expansion projects; and
  4. Maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order, the Hold Separate Monitor may, in consultation with Commission staff, direct the Hold Separate Business Employees to reduce in scale or pace any capital or research and development project of the Hold Separate Business, or substitute any capital or research and development project of the Hold Separate Business for another of the same cost.

- E. Respondents shall provide each Hold Separate Business Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Divestiture Assets pending divestiture. Such incentives shall include a continuation of all employee benefits (or employee benefits of substantially equivalent value), including funding of regularly scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Hold Separate Business until the Closing Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.
- F. No later than ten (10) days after the date the Acquisition is completed, Respondents shall establish and implement procedures, subject to the approval of the Hold Separate Monitor, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate Order.
- G. No later than ten (10) days after the date the Acquisition is completed, Respondents shall circulate to Hold Separate Business Employees, Support Services Employees, and to persons who are employed in Respondents' businesses that compete with the Hold Separate Business, a notice of the requirements of this Hold Separate Order, the Decision and Order, and the Consent Agreement, in a form approved by the Hold Separate Monitor in consultation with Commission staff, including copies of the Hold Separate Order and the Decision and Order.

## V.

### **IT IS FURTHER ORDERED** that:

- A. After the date the Acquisition is completed, Respondents' employees, other than employees of the Hold Separate Business and Support Services Employees, shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Hold Separate Business except in the course of:
  - 1. Performing their obligations or as permitted under this Hold Separate Order or the Decision and Order;
  - 2. Performing their obligations under the Divestiture Agreements;
  - 3. Negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence; and

4. Complying with financial reporting requirements, obtaining legal advice, defending legal claims, conducting investigations, or enforcing actions threatened or brought against the Hold Separate Business, or as required by law. Notwithstanding the above, Respondents may receive aggregate financial and operational information relating to the Hold Separate Business only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws and regulations of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate Order or in complying with or as permitted by the Decision and Order. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this Hold Separate Order.

For purposes of this Paragraph V.A., Respondents' employees that provide Support Services or that staff the Hold Separate Business shall be deemed to be performing obligations under this Hold Separate Order.

- B. If access to or disclosure of Material Confidential Information of the Hold Separate Business to Respondents' employees is necessary and permitted under Paragraph V.A. of this Hold Separate Order, Respondents shall:
  1. Implement and maintain a process and procedures, as approved by the Hold Separate Monitor, such approval not to be unreasonably withheld, pursuant to which Material Confidential Information of the Hold Separate Business may be disclosed or used only:
    - a. to or by those employees who require such information;
    - b. to the extent such Material Confidential Information is required; and
    - c. after such employees have signed an appropriate agreement in writing to maintain the confidentiality of such information.
  2. Enforce the terms of this Paragraph V. as to any of Respondents' employees and take such action as is necessary to cause each such employee to comply with the terms of this Paragraph V, including training Respondents' employees and taking all other actions that Respondents would take to protect their own trade secrets and proprietary information.
- C. Respondents shall implement, and maintain in operation, a system, as approved by the Hold Separate Monitor, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Hold Separate Business, including, but not limited to, the opportunity by the Hold Separate Monitor, on terms and conditions agreed to with

Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.

- D. No Hold Separate Business Employee shall receive or have access to, or use or continue to use, any non-public, confidential information relating to Respondents' businesses (not subject to the Hold Separate Order), except such information as is necessary to maintain and operate the Hold Separate Business.

## **VI.**

**IT IS FURTHER ORDERED** that, within thirty (30) days after this Hold Separate Order becomes final, and every thirty (30) days thereafter until this Hold Separate Order terminates, 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 all provisions of this Hold Separate Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Hold Separate Order.

## **VII.**

**IT IS FURTHER ORDERED** each Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger, or consolidation of such Respondent; and
- C. Any other change in such Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Hold Separate Order.

## **VIII.**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to its principal United States offices, registered office of its United States subsidiary, or headquarters address, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent 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 such Respondent related to compliance with this Hold Separate Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Hold Separate Order.

**IX.**

**IT IS FURTHER ORDERED** that this Hold Separate Order shall terminate at the earlier of:

- A. Three (3) business 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 day after divestiture required by the Decision and Order is completed.

By the Commission, Commissioner Wright dissenting.

Donald S. Clark  
Secretary

SEAL:  
ISSUED: May 5, 2015

**CONFIDENTIAL APPENDICES A-B**  
**[Redacted From the Public Version, But Incorporated By Reference]**