

**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)	
)	
)	
ZF Friedrichshafen AG,)	
a corporation; and,)	
)	Docket No. C-4520
)	
TRW Automotive Holdings Corp.,)	
a corporation.)	
)	
)	

**APPLICATION FOR APPROVAL OF DIVESTITURE OF
THE TRW L&S BUSINESS**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Paragraph II of the Decision and Order (“D&O”) accepted for public comment by the Commission on May 5, 2015 in the above-captioned matter, Respondent TRW Automotive Holdings Corp. (together with its relevant subsidiaries, “TRW”) and Respondent ZF Friedrichshafen AG (together with its relevant subsidiaries, “ZF”) respectfully submit this Application for Approval of Divestiture of the TRW L&S Business¹ (“Application”) to THK Co., Ltd. (“THK”) upon the terms and subject to the conditions of the series of agreements

¹ Capitalized terms not defined in this Application have the definitions given to them in the D&O.

dated April 21, 2015 (together the “Divestiture Agreement”), provided with this Application as Confidential Appendix A hereto.

I. Introduction

On September 15, 2014, ZF and TRW (together, the “Respondents”) entered into an Agreement and Plan of Merger (the “Respondents’ Agreement”) whereby the Respondents agreed that ZF would acquire TRW for \$105.60 per share in an all-cash deal valued at approximately \$12.4 billion.

On April 22, 2015, the Respondents executed an Agreement Containing Consent Orders (“Consent Agreement”) that included the D&O and an Order to Hold Separate and Maintain Assets (“Hold Separate Order”), which, if approved, would require the Respondents to divest the TRW L&S Business.

On May 5, 2015, the Commission served on the Respondents a Complaint alleging that ZF’s acquisition of TRW, if consummated as described in the Respondents’ Agreement, would increase the likelihood of coordinated interaction among the remaining competitors in the North American heavy vehicle tie rod market and eliminate direct competition between ZF and TRW, resulting in the increased probability that customers would pay higher prices for heavy commercial vehicle tie rods in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the FTC Act, 15 U.S.C. § 45 (the “Complaint”).

On May 5, 2015, concurrently with the issuance of the Complaint, the Commission accepted the Consent Agreement and issued the Hold Separate Order.

On May 15, 2015, ZF closed its acquisition of TRW.

II. The Proposed Divestiture

On April 21, 2015, subject to the Commission's approval, TRW entered into a binding and definitive Divestiture Agreement to sell the TRW L&S Business to THK for \$400 million in cash, subject to working capital and other adjustments. The Divestiture Agreement includes:

- An overarching umbrella agreement (the "Umbrella Agreement");
- A Stock Purchase Agreement regarding the TRW L&S Business subsidiary located in the Czech Republic (the "Czech SPA");
- Asset Transfer Agreements regarding the TRW L&S Business assets located in Canada, Germany, and the United States (the "Canada ATA," "Germany ATA," and "U.S. ATA," respectively); and
- Certain ancillary agreements regarding, *inter alia*, supply, transition services, and intellectual property licenses.

The Divestiture Agreement includes, among other assets, all assets identified in Paragraph II of the D&O. Furthermore, as described below, THK has the necessary financial wherewithal, industry experience, and operational capability to ensure that the TRW L&S Business remains a strong, competitive business and a trusted partner to both customers and suppliers worldwide. Accordingly, the proposed divestiture will accomplish the purposes of the D&O by ensuring the continuation of the TRW L&S Business as an ongoing, viable, and effective competitor in the North American market for the research, development, engineering, manufacture, marketing, and sale of tie rods for heavy vehicles.

III. The Proposed Acquirer THK Is Well-Qualified to Be a Viable Competitor

A. Overview of THK

THK is a global manufacturer of machinery components. THK operates 28 manufacturing plants across Asia, North America, and Europe, and has approximately 9,250

employees. Approximately one quarter of its overall business involves the production of automotive machinery and components. In 2007, THK acquired 100% of the shares of Rhythm (a company active in the development, design, manufacture, and distribution of automotive parts for use in key safety devices from steering mechanisms, suspension, and brakes to transmissions) from The Carlyle Group. In 2011, THK acquired TRW's Asia-Pacific automotive linkage and suspension components business. THK successfully integrated both acquired companies into THK's automotive components business. THK is currently not controlled by a majority shareholder and is its own parent entity. THK's headquarters are in Tokyo, Japan and its shares are listed on the Tokyo Stock Exchange.

B. THK Has the Resources, Expertise, and Incentive to Maintain and Develop the TRW L&S Business

1. THK Has Sufficient Resources to Maintain and Develop the TRW L&S Business

In its financial year 2014, THK reported net sales of approximately ¥185.5 billion (approximately \$1.54 billion) and a gross profit of approximately ¥53 billion (approximately \$440 million). THK's financial year 2014 annual report is attached as Exhibit 1 hereto.

In 2015, THK has an estimated market capitalization of approximately ¥409.5 billion (approximately \$3.4 billion) and an estimated enterprise value of approximately ¥331.1 billion (approximately \$2.75 billion). The difference between THK's market capitalization and its enterprise value reflects a positive cash balance, which underscores the financial strength of THK.

As such, THK has ample financial resources to develop the TRW L&S Business as part of its existing operations. THK plans to use its cash on hand to finance the acquisition of the TRW L&S Business and thus does not require any external financing.

2. THK Has Proven Expertise Operating Linkage and Suspension Businesses

As mentioned above, THK is a global manufacturer of machinery components with a proven track record in automotive product areas and as such the TRW L&S Business falls directly under THK's core focus. Approximately one quarter of its overall business involves the production of automotive components and THK has years of experience in the manufacture and sale of linkage and suspension components in United States as well as China, Japan, Malaysia, Mexico, and Thailand. THK's principal customers include original equipment manufacturers ("OEMs") such as Nissan, Honda, General Motors, Ford, Chrysler, and KYB.² THK's current linkage and suspension components portfolio includes tie rods, stabilizer links, and suspension ball joints.³ THK's other major products include a myriad of automotive parts, such as miniature joints, transmission component parts, engine component parts, brake parts, cold-forged products, and precision plastic products.⁴

In 2011, THK further enhanced its preexisting linkage and suspension expertise by acquiring TRW's Asia-Pacific linkage and suspension business. That operation was integrated into THK's business without any significant issues.

² THK Rhythm, Principal Customers, *available at* <http://www.rhythm-mp.co.jp/english/company/abstract.html>.

³ THK Rhythm, Products Information, *available at* <http://www.rhythm-mp.co.jp/english/product/steering.html>.

⁴ THK Rhythm, Products Information, *available at* <http://www.rhythm-mp.co.jp/english/product/brake.html#reizyushi>.

Based on THK's history of success in the automotive parts industry and its successful acquisition of TRW's Asia-Pacific linkage and suspension business in 2011, the Respondents fully believe that THK has the expertise to operate the TRW L&S Business in a similarly successful and competitive manner.

3. THK Has Ample Incentive to Maintain and Develop the TRW L&S Business

THK is making a substantial investment to acquire the TRW L&S Business as an important part of its long-term strategy to grow its North American and European linkage and suspension business. THK is fully committed to, and has every incentive to maintain and improve, the TRW L&S Business.

C. There Are No Competition Concerns and No Risk That the Implementation of the Order Will Be Delayed

The Complaint identified heavy commercial vehicle ("HCV") tie rods as the source of the Commission's competition concerns relating to the Respondents' Agreement. Although THK is an important and growing supplier of linkage and suspension components to OEMs and original equipment suppliers ("OESs") worldwide, THK does not currently produce or sell any HCV tie rods or any other HCV linkage and suspension components in North America. Thus, the proposed divestiture does not result in a concentration with respect to HCV tie rods and therefore does not present any competition concerns relating to that product.

While there are product overlaps between THK and the TRW L&S Business in certain light vehicle linkage and suspension components, these overlaps also do not present any competition concerns, as they are limited and the parties' activities are largely complementary.

The following tables contain the Respondents' estimates of market shares with respect to the overlapping light vehicle suspension components in North America⁵:

[REDACTED]

The proposed combination of TRW's and THK's shares in these product areas represent incremental increases in concentration and present no competitive issues.

Notwithstanding the absence of competition concerns, consummation of the proposed divestiture is conditioned on, *inter alia*, the receipt of competition clearances by all relevant Governmental Authorities (including the approval of THK as a suitable purchaser by the Commission and European Commission). THK and the Respondents have determined that formal merger control filings are necessary in the United States, Canada, Germany, and Poland and are in the process of preparing the required notifications. The Respondents are confident that THK will receive the requisite approvals in a timely manner and that the implementation of the D&O will not be delayed. The parties' objective is to close on the transaction by July 31, 2015 but in all events no later than October 22, 2015.

D. THK Is Independent of the Respondents

As discussed below, THK is independent of, and unconnected to, the Respondents.

Specifically:

- THK has no direct or indirect ownership interests in any company owned or controlled by the Respondents or any of their affiliates.
- No director of THK or any of its subsidiaries is on the board of any company owned or controlled by the Respondents or any of their affiliates.

⁵ The estimates provided herein differ from the estimates the Respondents provided to the FTC on December 2, 2014 due to direct input from THK's outside counsel regarding THK's sales in North America. Those actual figures have replaced the estimated figures from the previous estimates.

- No company owned or controlled by either of the Respondents or any of their affiliates has any direct or indirect ownership interest in THK or any of its subsidiaries.
- No director of any company owned or controlled by the Respondents or any of their affiliates is on the board of THK or any of its subsidiaries.
- THK is not economically dependent on the Respondents.
- The Respondents are not economically dependent on THK.

For completeness, the Respondents note the following regarding arm's-length, ordinary course dealings between THK and the Respondents during the last financial year:

- In 2014, ZF did not sell any products to THK.
- In 2014, THK supplied steering tie rods to ZF's chassis system assembly business in Asia for approximately [REDACTED].
- In 2014, TRW provided services to THK for approximately [REDACTED].
- In 2014, THK supplied steering tie rods and components to TRW in Brazil, China, Germany, Japan, Korea, Malaysia, and Thailand for approximately [REDACTED].⁶

These commercial relationships between THK and the Respondents do not undermine the commercial independence of THK as a purchaser of the TRW L&S Business. None of these relationships are material to THK or to either of the Respondents. THK's sales to the Respondents represented less than 1% of THK's 2014 revenues and less than 0.5% of the Respondents' 2014 revenues. All of these relationships are ordinary course and reflect arm's length terms that are customary in the industry.

IV. The Proposed Divestiture Conveys All of the TRW L&S Assets Required to Be Divested and Is Consistent with the Decision and Order

A. The Proposed Divestiture Conveys All of the TRW L&S Business Assets as Required by the Decision and Order

⁶ On April 1, 2015, we advised the FTC that TRW had purchased approximately [REDACTED] worth of products (primarily ball joints and tie rods) from THK in 2014. TRW subsequently discovered that total purchases in 2014 were approximately [REDACTED] because some of TRW's spend had been classified as intercompany transactions as a legacy of TRW purchasing such products from the Asia-Pacific business sold to THK in 2011. As explained in the text, the volume of TRW purchases in 2014 is still immaterial to THK's and TRW's businesses.

Paragraph I.RR of the D&O describes the package of assets the Commission has required the Respondents divest to remedy its competition concerns. The scope of the TRW L&S Business pursuant to the Divestiture Agreement is consistent with Paragraph I.RR of the D&O. In particular, the Respondents will transfer all of their legal and equitable rights, title, and interests in all tangible and intangible property of any kind used for or relating to:

- The research, engineering, manufacture, marketing, and/or sale of L&S Components at or from the TRW L&S Facilities⁷;
- TRW L&S Books and Records⁸;
- TRW L&S Contracts⁹;
- TRW L&S Intellectual Property¹⁰; and
- TRW L&S Inventories.¹¹

⁷ See, e.g., Paragraph 2.1 of the U.S. ATA.

⁸ See, e.g., Paragraph 2.1(h) of the U.S. ATA.

⁹ See, e.g., Paragraph 2.1(e)-(g) of the U.S. ATA.

¹⁰ See, e.g., Paragraph 2.1(a)-(d) of the U.S. ATA. In terms of Intellectual Property and patents in particular, see Schedule 3.18(a) of the German ATA.

¹¹ See, e.g., Paragraph 2.1(i) of the U.S. ATA.

B. The Terms of the Divestiture Agreement Are Consistent with the Terms of the Decision and Order

1. Timing

Paragraph II.A of the D&O requires the Respondents to divest the TRW L&S Business no later than six months from the ACCO Execution Date, April 22, 2015, or October 22, 2015. The Divestiture Agreement contemplates the closing will occur by the later of (i) the date that is five business days after all of the conditions to the closing set forth in the Divestiture Agreement are satisfied or waived and (ii) July 31, 2015. In all events, the Respondents expect the divestiture will close no later than October 22, 2015, consistent with the terms of the D&O.¹²

2. Transition Services

The D&O requires the Respondents to provide various transition services at the option of the Acquirer, to ensure that the divested business is able to function fully and without prejudice during the period immediately following the divestiture. The Divestiture Agreement includes a Transition Services Agreement that provides for a variety of transition services that are more than adequate to meet the requirements of the D&O.

Specifically, Paragraph II.B.2 of the D&O requires the divestiture to include a Transition Services Agreement that commits the Respondents to the provision of certain services relating to the TRW L&S Business—such as payroll, employee benefits, accounts receivable, accounts payable, utility services, heating and air conditioning services and systems, and other logistical and administrative support—for a term of up to two years at no more than the Direct Costs of the Respondents. The Divestiture Agreement contain a Transition Services

¹² See, e.g., Paragraph 9.1 of the U.S. ATA.

Agreement and affiliated Statements of Work describing in detail the variety of transition services the Respondents will provide to THK post-transaction, satisfying this requirement.¹³ Moreover, Paragraph II.B.1 of the D&O requires the Respondents to lease to the Acquirer of the divested business, upon commercially reasonable terms and for a period of at least one year with an optional six-month extension, the areas within the TRW's Düsseldorf facility used or planned to be used for Düsseldorf Design, Engineering & Sales Support. The Transition Services Agreement will include a Statement of Work that provides for lease terms that comport with the D&O's requirements.¹⁴

Finally, consistent with Paragraph II.B.4 of the D&O, the Divestiture Agreement includes a Transition Trademark Assistance Agreement as Exhibit A of the Umbrella Agreement.

3. License Back Agreement

Paragraph II.C of the D&O permits the Divestiture Agreement to include License Back arrangements for the Respondents to use TRW L&S Intellectual Property which was delivered to or used by TRW businesses other than the TRW L&S Business prior to March 12, 2015 for the research, development, production, manufacture, marketing, and sale of products related to (i) tie rods used in TRW's non-competing steering business currently at TRW's Schalke facility and (ii) L&S Components used in TRW's independent aftermarket business, but only insofar as such L&S Components are not sold in competition with products produced by the TRW L&S

¹³ See, e.g., Schedules 1-15 of Exhibit 2.1.A of the U.S. ATA. The Statements of Work remain a work in process as the parties discuss final wording but no material changes are expected.

¹⁴ See, e.g., Schedule 7 of Exhibit 2.1.A of the U.S. ATA. The final wording of this Statement of Work remains subject to further discussion with THK although again material changes are not anticipated.

Business and sold to OEMs or OESs.¹⁵ In addition, Paragraph I.W of the D&O notes that nothing contained in the D&O prevents the Respondents and the Acquirer from agreeing to license back additional TRW L&S Intellectual Property, with the understanding that any such agreement is subject to the Commission's approval.

Consistent with these provisions, THK has agreed to grant the Respondents a perpetual, royalty-free license back to allow the Respondents to continue manufacturing certain L&S Components in its Schalke facility to allow Schalke to continue to support an extremely limited number of existing OEM programs, the bulk of which produce parts for Daimler Sprinter vehicles, approximately [REDACTED]% of which are sold in Russia.¹⁶ These other tie rod sales comprise less than [REDACTED]% of the volume of tie rods manufactured in Schalke, with a projected 2015 sales value of less than [REDACTED]. In light of the *de minimis* nature of these components and sales, and the fact the additional license back is limited to supporting current and not future OEM programs, the Respondents submit that these insubstantial OEM programs will have no impact on competition and respectfully request that the Commission permit this additional limited use, as provided for in Paragraph I.W of the D&O.

As previously discussed with the FTC staff, Christophe Baron, the Chief Executive Officer of the TRW L&S Business, supports all of the foregoing License Back arrangements.

¹⁵ Confidential Appendices A-1 and A-2 of the Decision and Order permit the License Back of the Intellectual Property delivered to or used by TRW's Schalke facility (located at Freiligrathstrasse 8-28, D-45881, Gelsenkirchen, Germany) prior to March 12, 2015, and necessary to research, develop, produce, manufacture, market, or sell the products described on the drawings specifically identified in those appendices.

¹⁶ See Intellectual Property License Agreement (Exhibit C of the German ATA). The Intellectual Property License Agreement included with the Application for Approval of Divestiture of the TRW L&S Business is as-proposed to THK, and is consistent with the terms of the D&O, but has not yet been finalized. The few OEM programs supported by Schalke will be identified in an exhibit to the Intellectual Property License Agreement.

4. Consents

[REDACTED]. The Divestiture Agreement requires the Respondents obtain all consents listed on certain schedules.¹⁷

[REDACTED]. [REDACTED]¹⁸ and [REDACTED],¹⁹ [REDACTED].²⁰

5. Indemnification

Paragraph II.E of the D&O requires that the Divestiture Agreement include provisions that promote achieving the purposes of the Order allocating and providing for indemnification of any liabilities and direct or indirect damages and claims of customers or any other Persons (including, but not limited to, environmental liabilities, product liabilities, and product recalls) related to the operation of the TRW L&S Business prior to the Divestiture Date. The Divestiture Agreement includes mutually agreed provisions that provide for the allocation of certain liabilities between THK and the Respondents, subject to certain caps and deductibles that are normal, customary, and appropriate for the industry.²¹

6. Tillsonburg Production Line Relocation

Paragraph II.B.1 and Confidential Appendix E of the D&O impose various requirements with respect to the transfer of the Tillsonburg Production Lines from the Retained Tillsonburg Facility to the Tillsonburg Facility. The Respondents have covenanted in the Canadian ATA to perform this undertaking in the manner required by the D&O.²²

7. Cooperation with Hiring and Retention Efforts

¹⁷ See, e.g., Schedule 3.10(a) of the U.S. ATA.

¹⁸ See Schedule 1 of the Umbrella Agreement.

¹⁹ See Schedule 2 of the Umbrella Agreement.

²⁰ See Paragraph 5(a)(ii) of the Umbrella Agreement.

²¹ See, e.g., Paragraphs 10.2, 10.6, and 10.7 of the U.S. ATA.

²² See Paragraph 5.19 of the Canada ATA.

The D&O requires the Respondents to cooperate with and assist the Acquirer in evaluating and retaining employees of the divested business and also to abstain from directly or indirectly soliciting, hiring, or entering into any arrangement for the services of any former TRW employees employed by Acquirer (for one year in the case of TRW Workforce Employees, and two years in the case of TRW Key Employees).²³ The Divestiture Agreement contains provisions that require the Respondents to cooperate with THK's efforts to continue the employment of the TRW Employees, and also impose restrictive covenants on solicitation and hiring that are consistent with the terms of the D&O.²⁴

C. The Divestiture Agreement Is Consistent with the Purpose of the Decision and Order

Paragraph II.H of the D&O states that the purpose of D&O is to ensure the continuation of the TRW L&S Business as an ongoing, viable, and effective competitor in the North American market for the research, engineering, manufacture, marketing, and sale of HCV tie rods, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint. Divesting the TRW L&S Business to THK fulfills the purpose of the D&O because THK will continue to operate the TRW L&S Business as a viable and effective competitor in both North America and Europe. As discussed above, THK has the incentive, financial capacity, and experience necessary to operate a robust, competitive linkage and suspension business in North America. Moreover, the divested TRW L&S Business includes an experienced management team that is committed and excited to work with THK to maintain and

²³ Paragraph III.A-C

²⁴ See, e.g., Paragraph 5.5, 5.9(a), and 5.9(b) of the U.S. ATA.

grow the TRW L&S Business. Respondent's sale of the TRW L&S Business to THK will remedy any alleged competitive harm described in the Complaint.

V. Request for Confidential Treatment

This Application, including the attached Agreement and related documents, contains confidential and competitively sensitive information relating to the Respondents, the divestiture of the TRW L&S Assets, and THK. Disclosure of this confidential information may prejudice the Respondents and THK, and cause harm to the ongoing competitiveness of both companies, as well as the divested TRW L&S Assets.

Pursuant to Sections 6(f) and 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2(c), and Sections 2.41(f), 4.9 and 4.10 the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(1), 4.9 and 4.10, the Respondents requests that nonpublic, commercially or competitively sensitive information contained in this Application be treated by the Commission as strictly confidential and not be made available to the public. The Respondents requests that the Commission inform it immediately if the Commission cannot treat the confidential information contained in this Application as confidential in order to provide the Respondents an opportunity to seek relief.

For the convenience of maintaining the public record, the Respondents are submitting two versions of this Application. The confidential version contains the information necessary to enable the Commission to assess the Application. The public version has been redacted to exclude confidential and proprietary information.

VI. Conclusion

For the reasons set forth above, the proposed divestiture of the TRW L&S Business to THK is pro-competitive, in the public interest, and addresses any competitive concerns raised in the Complaint and the D&O. The Respondents respectfully request that the Commission approve the divestiture of the TRW L&S Business to THK.

Dated: May 19, 2015

Respectfully submitted,

A handwritten signature in black ink that reads "Peter Thomas / NPM". The signature is written in a cursive style and is positioned above a horizontal line.

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