Statement of the Federal Trade Commission
In the Matter of ZF Friedrichshafen AG and TRW Automotive Holdings Corp.
File No. 141-0235
May 8, 2015

The Commission has issued a proposed complaint and consent order to address narrow competitive concerns associated with ZF Friedrichshafen AG's proposed $12.4 billion acquisition of TRW Automotive Holdings Corp.[1] Specifically, we have reason to believe that this proposed acquisition is likely to substantially reduce competition in the manufacture and sale of heavy vehicle tie rods in North America. The proposed remedy, which involves a divestiture of TRW's linkage and suspension business in North America and Europe, addresses our competitive concerns and will bolster the viability of the divested business in the hands of a buyer, without eliminating efficiencies that otherwise might arise from the combination of the two companies.

ZF and TRW are global automotive parts manufacturers. Both companies manufacture and sell a wide variety of components for discrete systems within a motor vehicle such as the chassis, powertrain, and suspension systems. They each have production facilities located throughout the United States, Canada, and Mexico.

The proposed transaction will create the second-largest global auto parts supplier. Our competitive concerns arise from a limited aspect of the proposed combination, namely, its likely effect in the market for the manufacture and sale of heavy vehicle tie rods for customers in North America. Tie rods are part of a motor vehicle's steering and linkage system; they are rigid connectors that link the wheels to the vehicle's steering control mechanism. To perform their intended function within the linkage systems of vehicles weighing six tons or more, these tie rods have to be large (approximately three to six feet long) and heavy (weighing approximately 50 pounds). This means that tie rods designed for light vehicles are not practical substitutes since they would be too small and light and therefore not as strong structurally. At the same time, tie rods designed for much heavier, industrial vehicles (like mining vehicles weighing hundreds of tons) would not be substitutes either.

Because of their weight, it is not economical to ship heavy vehicle tie rods over long distances. For this reason, North American customers primarily consider manufacturers with production facilities in the United States, Canada, and Mexico and generally do not regard suppliers outside of North America as viable options for reasons of price, logistics, and quality. As a result, ZF and TRW, together with a Mexican firm, USK Internacional, S.A. de C.V. ("Urresko"), account for virtually all (99%) of the sales of heavy vehicle tie rods in North America. We estimate the market shares of ZF, TRW, and Urresko to be 23%, 18%, and 58%, respectively. Fringe competitors hold the remaining 1% market share.

The parties' proposed combination will therefore reduce the number of significant competitors in the relevant market from three to two and substantially increase concentration in an already highly concentrated market.[2] Based on this increase in concentration and current

---

[1] This statement reflects the views of Chairwoman Ramirez and Commissioners Brill, Ohlhausen, and McSweeny.
[2] The proposed transaction would increase the Herfindahl-Hirschman Index ("HHI") in the relevant market from 4,218 to 5,046. The threshold at which a market is considered "highly concentrated" under

market conditions, we believe the transaction is likely to produce substantial anticompetitive effects in the relevant market, in particular, by increasing the potential for coordination. Furthermore, there is unlikely to be any entry that would alleviate our competitive concerns. The small market size, the strong position of the incumbents, switching costs, and capital and knowledge barriers, among other factors, would more than likely deter North American manufacturers of related automotive parts—the most logical candidates for entry—from expanding their product offerings to include heavy vehicle tie rods. Consequently, we have reason to believe that the proposed combination would substantially lessen competition in the relevant market and harm customers and consumers, thereby violating Section 7 of the Clayton Act.

In light of the foregoing, we respectfully disagree with Commissioner Wright's assertions that we lack a "credible basis" on which to conclude that the merger may enhance the risk of coordination and that our action is otherwise inconsistent with the 2010 Horizontal Merger Guidelines.[3] Under the 2010 Guidelines, substantial increases in concentration caused by a merger rightly continue to play an important role in our merger analysis.[4] They do so for the simple reason that highly concentrated markets are more conducive to anticompetitive outcomes than less concentrated markets.[5] Accordingly, the lens we apply to the evidence in a merger that reduces the number of firms in a market to three or two is, and should be, different than the lens we apply to a merger that reduces the number of firms to seven or six. Where, as here, a proposed merger significantly increases concentration in an already highly concentrated market, a presumption of competitive harm is justified under both the Guidelines and well-established case law.[6]

---

the Merger Guidelines is 2,500. *See* U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES § 5.3 (2010).

[3] Dissenting Statement of Commissioner Joshua D. Wright at 3−4.

[4] *See* Carl Shapiro, *The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years*, 77 ANTITRUST L.J. 701 (2010) ("Thus, like the fox, the 2010 Guidelines embrace multiple methods. But this certainly does *not* mean they reject the use of market concentration to predict competitive effects, as can be seen in Sections 2.1.3 and 5."). As Commissioner Wright acknowledges, "The predictive power of market share and market concentration data is informed by economic theory and available empirical evidence." Wright Dissent at 7.

[5] *See, e.g.,* Steven C. Salop, *The Evolution and Vitality of Merger Presumptions: A Decision-Theoretic Approach* 11 (Georgetown Law Faculty Publications and Other Works, Working Paper No. 1304, 2014), *available at* http://scholarship.law.georgetown.edu/facpub/1304 ("[V]arious theories of oligopoly conduct—both static and dynamic models of firm interaction—are consistent with the view that competition with fewer significant firms on average is associated with higher prices.… Accordingly, a horizontal merger reducing the number of rivals from four to three, or three to two, would be more likely to raise competitive concerns than one reducing the number from ten to nine, *ceteris paribus*."); Steffen Huck, et al., *Two Are Few and Four Are Many: Number Effects from Experimental Oligopolies*, 53 J. ECON. BEHAVIOR & ORG. 435, 443 (2004) (testing the frequency of collusive outcomes in Cournot oligopolies and finding "clear evidence that there is a qualitative difference between two and four or more firms"); Timothy F. Bresnahan & Peter C. Reiss, *Entry and Competition in Concentrated Markets*, 99 J. POL. ECON. 977, 1006 (1991) (finding, in a study of tire prices, that "[m]arkets with three or more dealers have lower prices than monopolists or duopolists," and noting that, "while prices level off between three and five dealers, they are higher than unconcentrated market prices").

[6] *See* MERGER GUIDELINES § 2.1.3 ("Mergers that cause a significant increase in concentration and result in

Despite Commissioner Wright's insistence to the contrary, our inquiry extended beyond consideration of market concentration and application of the Guidelines presumption of competitive harm. We also examined the transaction's likely anticompetitive effects, and are satisfied that there is sufficient evidence to support the issuance of our complaint and proposed consent order.[7] As noted above, we are particularly concerned that the transaction is likely to enhance the potential for coordination.[8] As set forth in the Guidelines, the Commission is likely to challenge a merger under a coordinated effects theory if: "(1) the merger would significantly increase concentration and lead to a moderately or highly concentrated market; (2) that market shows signs of vulnerability to coordinated conduct []; and (3) the [Commission has] a credible basis on which to conclude that the merger may enhance that vulnerability."[9] We have reason to believe that all three factors are satisfied here.[10]

First, as noted above, the proposed transaction results in a highly concentrated relevant market.[11] Second, the market is susceptible to coordinated conduct, as evidenced by several recent cases of collusion in the auto parts industry.[12] Third, by reducing the number of significant competitors to only two, the merger would decrease the impediments to reaching common terms of coordination and make it easier to monitor compliance with, and retaliate

---

highly concentrated markets are presumed to be likely to enhance market power, but this presumption can be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power."); *Chicago Bridge & Iron Co., N.V. v. FTC*, 534 F.3d 410, 423 (5th Cir. 2008) ("Typically, the Government establishes a *prima facie* case by showing that the transaction in question will significantly increase market concentration, thereby creating a presumption that the transaction is likely to substantially lessen competition."); *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 716 (D.C. Cir. 2001) (merger to duopoly creates a rebuttable presumption of anticompetitive harm through direct or tacit coordination).

[7] The investigation in this matter did not proceed to a full phase because the parties proposed a remedy soon after second requests had been issued. Consequently, the quantum of evidence is not the same as if the agency had completed a full-phase investigation. But that does not mean, as Commissioner Wright suggests, that we are lowering our reason-to-believe standard when a remedy is proposed during the course of an investigation. Wright Dissent at 9. We believe our complaint is well supported and meets the same reason-to-believe standard we always apply. We simply do not think it would have been appropriate to subject the parties to the added expense and delay of a full-phase investigation. It would not have been a good use of Commission resources either.

[8] Although coordinated effects is the primary basis upon which we found reason to believe that the proposed transaction violates Section 7 of the Clayton Act, we also found evidence of unilateral effects, namely, that in the past, customers have solicited competing bids from ZF and TRW to obtain better prices, and have switched between ZF and TRW as their preferred supplier.

[9] MERGER GUIDELINES § 7.1.

[10] 15 U.S.C. § 45(b) (2013).

[11] *See* Shapiro, *supra* note 4, at 708 ("In particular, as the revised Guidelines explain, the Agencies place considerable weight on HHI measures in cases involving coordinated effects.").

[12] Among the Antitrust Division's recent prosecutions of companies and individuals in the automotive parts industry for price-fixing and bid-rigging is an indictment involving TRW in an alleged conspiracy for seat belts, air bags, and steering wheels. *See* Plea Agmt., *United States v. TRW Deutschland Holding GMBH*, Crim. No. 12-20491 (E.D. Mich. Sept. 25, 2012), *available at* http://www.justice.gov/atr/cases/f287600/287657.pdf. *See generally* MERGER GUIDELINES § 7.2 ("Previous collusion or attempted collusion in another product market may also be given substantial weight if the salient characteristics of that other market at the time of the collusion are closely comparable to those in the relevant market.").

against potential deviation from, a coordinated scheme. Specifically, as remaining duopolists with nearly equal shares (41% and 58%, respectively), the combined firm and Urresko would have greater incentives to take advantage of a market with relatively few customers that purchase homogeneous products through individual purchase orders rather than long-term supply contracts. They would also find it easier to divide customers and monitor their allocations.

Our concern that the merger may enhance the relevant market's vulnerability to coordination is backed by the well-accepted view that markets with only two or three firms are more conducive to anticompetitive outcomes than markets with four or more firms.[13] The proposed merger would eliminate a third competitor and create greater symmetry between the two remaining firms.

Additionally, there is no evidence that fringe competitors, which have higher prices, or new entrants, which are unlikely to materialize, could disrupt any coordination between the combined firm and Urresko. For these reasons, we have ample basis to conclude that the merger may enhance the vulnerability to coordinated effects that already exists in the relevant market.[14]

As we noted above, the parties have chosen to address our limited competitive concerns in the heavy vehicle tie rods market through a proposal to divest TRW's linkage and suspension business in North America and Europe. This allows the parties to address our competition concerns, as well as those of the European Commission. The EC has already accepted the proposed settlement and ordered the divestiture of the European assets.[15] Furthermore, there is no evidence that the divestiture of TRW's linkage and suspension business would eliminate any efficiencies that otherwise might result from the parties' proposed combination.

In sum, because we have reason to believe that customers and consumers are likely to suffer a substantial loss of competition as a result of the proposed transaction, and there are no demonstrated countervailing efficiencies, we believe the public interest is best served by accepting the proposed consent order to remedy our competitive concerns.

---

[13] *See* Salop; Huck et al.; Bresnahan & Reiss, *supra* note 5.

[14] *See* MERGER GUIDELINES § 7.1 (recognizing that "the risk that a merger will induce adverse coordinated effects may not be susceptible to quantification or detailed proof"). The Guidelines contemplate that the third factor can be satisfied in several ways; as Commissioner Wright himself notes, an acquisition of a maverick firm is but "one illustrative example of the type of evidence that would satisfy this third condition." Wright Dissent at 3.

[15] *See* Press Release, European Commission, Mergers: Commission Clears Acquisition of Automotive Components Manufacturer TRW by Rival ZF, Subject to Conditions (Mar. 12, 2015), *available at* http://europa.eu/rapid/press-release_IP-15-4600_en.htm.