

(HCSC), Chesapeake, VA; Indiana Microelectronics, LLC, West Lafayette, IN; Invitix LLC, dba Instant Technologies, Durham, NH; Minerva Systems & Technologies, LLC, Lexington, KY; Pacific Science & Engineering Group, Inc. San Diego, CA; Popily, Inc. d.b.a. New Knowledge, Austin, TX; Poplicus, Inc DBA Govini, Arlington, VA; Quantum Dimension, Inc., Huntington Beach, CA; Quest Government Services Inc. dba CenturyLink QGS, Arlington, VA; Spectral Analytics, LLC, San Diego, CA; and The Samraksh Company, Dublin, OH have withdrawn from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 23, 2018 (83 FR 53499).

The last notification was filed with the Department on October 16, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 30, 2019 (84 FR 58174).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020-01819 Filed 1-30-20; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. ZF Friedrichshafen AG, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. ZF Friedrichshafen AG, et al.*, Civil Action No. 1:20-cv-00182. On January 23, 2020, the United States filed a Complaint alleging that ZF Friedrichshafen AG's proposed acquisition of WABCO Holdings, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Defendants to divest WABCO's R.H. Sheppard Co.,

Inc. subsidiary, along with certain related WABCO assets.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to John Read, Acting Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: 202-307-0468).

Amy Fitzpatrick,

Counsel to the Senior, Director of Investigations and Litigation.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v. ZF Friedrichshafen A.G., Lowentaler Strasse 20, 88046 Friedrichshafen, Germany, and WABCO Holdings, Inc., 1220 Pacific Drive, Auburn Hills, MI 48326, Defendants.

Civil Action No.: 1:20-cv-00182

Judge: Hon. Ketanji B. Jackson

Complaint

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants ZF Friedrichshafen AG ("ZF") and WABCO Holdings, Inc. ("WABCO") to enjoin the proposed merger of ZF and WABCO. The United States complains and alleges as follows:

I. Nature of the Action

1. Pursuant to an agreement and plan of merger dated March 28, 2019, ZF and WABCO propose to merge in a transaction that would unite two of the leading global suppliers of components used in the manufacture of large commercial vehicles ("LCVs"), which include commercial trucks and buses.

2. ZF and WABCO are the only suppliers of steering gears for use in LCVs in North America. Steering gears

are an essential part of the steering systems used to direct the front wheels of LCVs. They are also a key component of advanced driver-assisted steering systems that provide safer, more efficient vehicle operation, and could ultimately be developed to enable autonomous operation of LCVs. The proposed merger would eliminate competition between ZF and WABCO and likely create a monopoly for LCV steering gears in North America.

3. As a result, the proposed transaction likely would substantially lessen competition in the market for the design, manufacture, and sale of LCV steering gears in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants and the Transaction

4. ZF is a German company headquartered in Friedrichshafen, Germany. It has 149,000 employees in 40 countries, and had annual sales of \$36.9 billion in 2018, \$9.6 billion of which were in the United States. ZF's North American business historically focused on the production and sale of transmissions to passenger and light vehicle manufacturers, but in 2015, ZF acquired a leading U.S. steering systems manufacturer, TRW, Inc. ZF's U.S. headquarters are in Livonia, Michigan.

5. WABCO is a Delaware corporation with a North American headquarters in Auburn Hills, Michigan, and a global headquarters in Bern, Switzerland. WABCO descends from the original Westinghouse Air Brake Company formed in 1869. It has 16,000 employees in 40 countries, and had annual sales in 2018 of \$3.8 billion, \$850 million of which were in the United States. WABCO's North American business historically focused on commercial vehicle air brake and air suspension components, but in 2017, WABCO acquired a leading U.S. commercial vehicle steering component company, R.H. Sheppard Co., Inc.

6. On March 28, 2019, pursuant to an agreement and plan of merger, ZF agreed to acquire WABCO in a deal valued at approximately \$7 billion.

III. Jurisdiction and Venue

7. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Defendants design, manufacture, and sell LCV steering gears in the United States that are used on LCVs in service throughout the United States. Defendants' activities in the design, manufacture, and sale of these products

therefore substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

9. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(c).

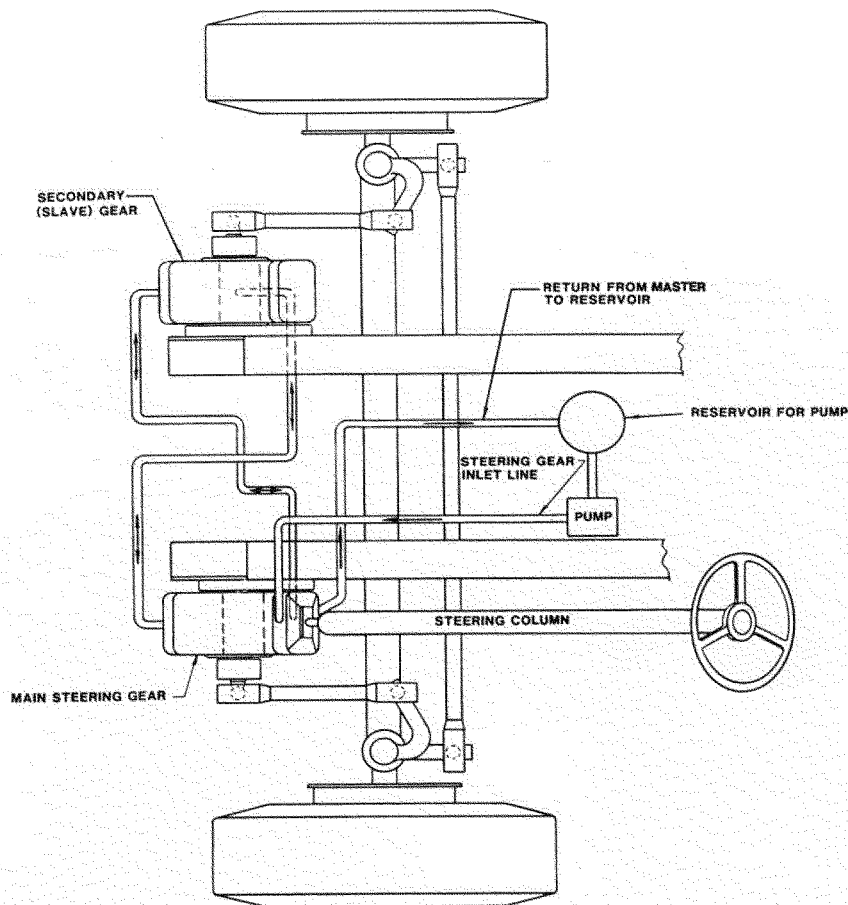
IV. LCV Steering Gears

A. Background

10. Steering system components work together to direct a vehicle, and include steering gears, steering pumps, pitman arms, steering columns, steering linkages, and electronic steering controls. Steering equipment suitable for LCVs is sophisticated and highly engineered, especially the key component: Steering gears. LCVs include all trucks, buses, and off-road vehicles that weigh over 19,501 pounds (defined as Class 6–8 vehicles by the United States Department of Transportation (49 CFR 565.15)).

11. Steering gears are located below the steering column (which is attached to the steering wheel) and translate direction to the steering linkage. Steering gears for LCVs have a complex hydraulic power recirculating ball gear. Steering gears must be tuned carefully to operate within the specifications of the individual LCV's design and performance requirements, and must work together with the entire system of steering equipment. An example of an LCV steering gear system is pictured below:

Figure 1: LCV Steering Gear Diagram



Source: R. H. Sheppard D-Series Integral Power Steering Gear Manual (current).

12. Advanced LCV steering gears also include what is known as a torque overlay. A torque overlay adds hardware that enables the steering gear to quickly and independently direct the vehicle without the input of the steering column, and allows for advanced driver assistance system (“ADAS”) steering features. ADAS technology in general includes features such as lane keeping

assist, adaptive cruise control, automated emergency braking, blind spot detection, and other similar features. For ADAS steering features, torque overlay steering gears work with sensors and electronic controls that detect the environment around the vehicle and then work with the steering hardware to keep the vehicle on the correct path and avoid collisions.

Within the last five years, truck and bus manufacturers have begun to use steering-related ADAS features, and both Defendants are actively engaged in research and development to improve steering-related ADAS features for eventual use in autonomous trucks and buses. In the future, steering-related ADAS features may be developed to the point where they can be combined with

other ADAS technology related to braking and powertrain control, enabling the potential for fully autonomous operation of commercial vehicles. LCV steering gears will continue to be a key component as future ADAS technology is developed.

13. Truck and bus manufacturers are the primary customers for LCV steering gears. These customers incorporate LCV steering gears into the vehicle's final assembly, and then sell to end-use customers. Other LCV steering gear customers include manufacturers of commercial vehicles for off-road, military, mining, and agriculture uses. Typically, customers purchase LCV steering gears separately from other steering components, although they also may choose to purchase a whole steering system. In some cases, another entity may buy the LCV steering gear from one of the merging parties and then integrate it into a whole steering system that it sells to truck or bus manufacturers. Customers generally buy steering gears either based on pre-established price lists or after a competitive bidding process.

14. The annual size of the North American market for LCV steering gears is approximately \$220 million.

B. Relevant Markets

1. Product Market: LCV Steering Gears

15. LCV steering gears must be durable and powerful enough to move large trucks or buses that utilize hydraulic steering systems without electronic power-assisted steering, because electronic power-assisted steering is not used on LCVs. This distinguishes LCV steering gears from lighter and simpler electronic steering gears used for smaller vehicles such as passenger cars. The quality and usefulness of an LCV steering gear is defined by several special characteristics, the most important of which are size, weight, torque required to move, and sensitivity, which relates to the ability of the gear to respond quickly and accurately to the driver or inputs from electronic controls.

16. There are no other steering methods or technologies that can accomplish the required functions of LCV steering gears. Truck and bus manufacturers require the highly-capable LCV steering gears discussed above because the lives and safety of drivers and other motorists, pedestrians, and property depend on the unflinching performance of an LCV steering gear to direct the vehicle. Other steering gears are less capable, and are therefore not a substitute for LCV steering gears

purchased for use in LCVs in North America.

17. For the foregoing reasons, customers will not substitute less-capable steering gears, or any other product, for LCV steering gears in response to a small but significant and non-transitory increase in the price of LCV steering gears. Accordingly, LCV steering gears are a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Market: North America

18. LCV steering gears used in North America require a different design and alignment than those used outside North America. This is because of distinct truck and bus design differences, such as those related to higher weight and power, and a common configuration in which the cab is located behind the axles rather than over them. Because of these differences, truck and bus manufacturers strongly prefer LCV steering gears that have performed successfully on North American commercial vehicles, and have been unwilling to purchase steering gears used only in foreign markets. Customers also require their steering gear manufacturers to have an established North American presence for sales, service, and aftermarket support. Having an installed North American base helps customers to ensure that both in-house and third-party service technicians have experience with the relevant steering gears and have an existing spare parts inventory when gears need to be repaired or replaced. In the face of a small but significant and non-transitory price increase by North American producers of LCV steering gears, customers, therefore, are unlikely to turn to manufacturers located outside North America and who produce LCV steering gears solely for markets outside North America.

19. North America, therefore, is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Anticompetitive Effects of the Proposed Transaction

20. ZF and WABCO are the only firms that design, manufacture, and sell LCV steering gears in North America. After its acquisition of TRW in 2015, ZF became the leading North American firm selling steering systems and components for commercial vehicles. In the market for LCV steering gears in North America, it is estimated to have a 54 percent market share. WABCO is the only other market participant and

has an estimated 46 percent market share. WABCO sells LCV steering gears through its wholly-owned R.H. Sheppard subsidiary, which it acquired in 2017. The merger would give the combined firm a monopoly over LCV steering gears in North America, leaving North American customers without a sufficient competitive alternative for this critical component.

21. ZF and WABCO compete for sales of LCV steering gears on the basis of price, quality, service, innovation, and contractual terms such as delivery times. This competition has resulted in lower prices, higher quality, better service, and shorter delivery times. Competition between ZF and WABCO has also fostered innovation, leading to LCV steering gears with higher reliability and the innovative features such as torque overlay that are expected to be integral to the development of future ADAS technology, including features for autonomous LCVs. The combination of ZF and WABCO would eliminate this competition and its future benefits to truck and bus manufacturers and end-use customers. Post-transaction, the merged firm likely would have the incentive and ability to increase prices, lower quality or service, offer less favorable contractual terms, and reduce research and development efforts that would otherwise lead to innovative and high-quality products.

22. The proposed merger, therefore, likely would substantially lessen competition in the design, manufacture, and sale of LCV steering gears in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

D. Difficulty of Entry

23. Sufficient, timely entry of additional competitors into the market for LCV steering gears in North America is unlikely. Truck and bus manufacturers have shown little interest in buying steering gears and other components from anyone other than the only two established suppliers, ZF and WABCO, because of their proven performance and North American presence.

24. Production facilities and sales and service infrastructure for LCV steering gears require a substantial investment in both capital equipment and human resources. To be competitively viable, a new entrant would need to construct a factory to produce a range of steering components, establish production lines capable of manufacturing the components, and build assembly lines and establish or acquire access to testing equipment and facilities.

25. A new entrant also would need to retain engineering and research

personnel to design, test, and troubleshoot the detailed manufacturing process necessary to produce LCV steering gears acceptable to North American customers. Any new LCV steering gears also would require extensive customer testing and qualification before they would be used by North American truck and bus manufacturers or accepted by end users. Moreover, because LCV steering gears now being designed and developed by ZF and WABCO are undergoing continuous technological improvement and innovation for use in the development of ADAS features, any new entrant would need to acquire equivalent expertise and proprietary technologies to enable steering-related ADAS features to be efficiently incorporated into the advanced electronic control components of future North American LCVs.

26. Finally, because customers prefer to use LCV steering gear manufacturers with an existing installed base to ensure efficient and quality service by customers' in-house or third-party service centers, a new entrant lacking an installed base would be at a severe disadvantage.

27. As a result of the barriers described above, entry into the market for LCV steering gears would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from the merger of ZF and WABCO.

V. Violations Alleged

28. The merger of ZF and WABCO likely would substantially lessen competition in the design, manufacture, and sale of LCV steering gears in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

29. Unless enjoined, the merger likely would have the following anticompetitive effects, among others, related to the relevant market:

(a) Actual and potential competition between ZF and WABCO would be eliminated;

(b) competition likely would be substantially lessened; and

(c) prices likely would increase, quality and the level of service would decrease, innovation would decrease, and contractual terms likely would be less favorable to customers.

VI. Request for Relief

30. The United States requests that this Court:

(a) Adjudge and decree that ZF's merger with WABCO would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) preliminarily and permanently enjoin and restrain Defendants and all

persons acting on their behalf from consummating the proposed merger of ZF and WABCO, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine ZF and WABCO;

(c) award the United States its costs for this action; and

(d) award the United States such other and further relief as the Court deems just and proper.

Dated: January 23, 2020.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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*Lead Attorney to be Noticed

United States District Court for the District of Columbia

United States of America, Plaintiff, v. ZF Friedrichshafen AG, and WABCO Holdings, Inc., Defendants.

Civil Action No.: 1:20-cv-00182

Judge: Hon. Ketanji B. Jackson

[Proposed] Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on January 23, 2020, the United States and Defendants, ZF Friedrichshafen AG and WABCO Holdings, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, Defendants agree to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed*:

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to whom Defendants divest the Divestiture Assets.

B. "ZF" means ZF Friedrichshafen AG, a German corporation with its headquarters in Friedrichshafen, Germany; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "WABCO" means WABCO Holdings, Inc., a Delaware corporation with its headquarters in Auburn Hills, Michigan; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "R.H. Sheppard" means R.H. Sheppard Co., Inc., a Pennsylvania corporation with its headquarters in Hanover, Pennsylvania; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. R.H. Sheppard is a wholly-owned subsidiary of WABCO.

E. "Divestiture Assets" means all of Defendants' rights, title, and interests in and to (i) R.H. Sheppard, and (ii) all other WABCO property and assets, tangible and intangible, wherever located, related to or used in connection

with R.H. Sheppard (except for assets primarily used for human resources, legal, or other general or administrative support functions), including but not limited to:

1. The manufacturing and support facilities located at 101 Philadelphia Street, Hanover, Pennsylvania, 17331 (the "Hanover Facility");
 2. The manufacturing and support facilities located at 1400 Stafford-Umberger Drive, Wytheville, Virginia, 24382 (the "Wytheville Facility");
 3. All tangible assets, including, but not limited to: Research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and all other tangible property and assets; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements and development and production contracts; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records; and
 4. All intangible assets, including, but not limited to: All patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names (excluding any trademark, trade name, service mark, or service name containing the name "WABCO"); technical information; computer software (including software developed by third parties), and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information WABCO provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.
- F. "Relevant Employees" means all employees of (i) R.H. Sheppard, and (ii) all additional WABCO employees, wherever located, involved in the design, manufacture, or sale of large commercial vehicle (LCV) steering gears (except for employees primarily engaged in human resources, legal, or other

general or administrative support functions).

G. "Regulatory Approvals" means (i) any approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States ("CFIUS"), or under antitrust or competition laws required for the Transaction to proceed; and (ii) any approvals or clearances pursuant to filings with CFIUS, or under antitrust, competition, or other U.S. or international laws required for Acquirer's acquisition of the Divestiture Assets to proceed.

H. "Transaction" means the proposed acquisition of WABCO by ZF.

III. Applicability

A. This Final Judgment applies to ZF and WABCO, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the Divestiture Assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within the later of ninety (90) calendar days after the filing of the Complaint in this matter, or thirty (30) calendar days after Regulatory Approvals have been received, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States with reasonable access to Relevant Employees and with organization charts and information relating to Relevant Employees, including name, job title, past experience relating to the Divestiture Assets, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable the Acquirer to make offers of employment. Upon request, Defendants shall make Relevant Employees available for interviews with the Acquirer during normal business hours at a mutually agreeable location and will not interfere with efforts by the Acquirer to employ Relevant Employees, such as by offering to increase the salary or benefits of Relevant Employees other than as part of a company-wide increase in salary or benefits granted in the ordinary course of business.

D. For any Relevant Employees who elect employment with the Acquirer, Defendants shall waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all other benefits to which the Relevant Employees would generally be provided if transferred to a buyer of an ongoing business. For a period of twelve (12) months from the filing of the Complaint in this matter, Defendants may not solicit to hire, or hire, any Relevant Employee who was hired by the Acquirer, unless (1) the individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that Defendants may solicit or hire that individual. Nothing in Paragraphs IV(C) and (D) shall prohibit Defendants from maintaining any reasonable restrictions on the disclosure by any Relevant Employee who accepts an offer of employment with the Acquirer of the Defendant's proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to Defendants' businesses and clients, and (3) unrelated to the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer that the Divestiture Assets will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants must make best efforts to assign, subcontract, or otherwise transfer all contracts related to the Divestiture Assets, including all supply and sales contracts, to Acquirer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

I. At the option of the Acquirer, Defendants shall enter into a supply contract for the assembly of active steering electronic control units sufficient to meet all or part of the Acquirer's needs for a period of up to six (6) months. Upon Acquirer's request, the United States, in its sole discretion, may approve one or more extensions of any such agreement for a total of up to an additional six (6) months. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions for such assembly.

J. At the option of the Acquirer, Defendants shall enter into a transition services agreement for back office, human resource, and information technology services and support for the Divestiture Assets for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional six (6) months. If the Acquirer seeks an extension of the term of this transition services agreement, Defendants shall notify the United States in writing at least three (3) months prior to the date the transition services contract expires. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance. The employee(s) of Defendants tasked with providing these transition services shall not share any competitively sensitive information of the Acquirer with any other employee of Defendants.

K. Defendants shall warrant to the Acquirer (1) that there are no material defects in the environmental, zoning, or other permits relating to the operation of the Divestiture Assets, and (2) that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or by Divestiture Trustee appointed pursuant to Section V of this Final Judgment shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of the design, manufacture, and sale of LCV steering gears. If any of the terms of an agreement between Defendants and the Acquirer to effectuate the divestiture required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms, this Final Judgment shall determine Defendants' obligations. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the design, manufacture, and sale of LCV steering gears; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to

the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the Divestiture Assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for any of its services yet unpaid and those of any agents and consultants retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any agents and consultants retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of

the appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other agents or consultants, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the

purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, the United States may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not, in its sole discretion, it objects to the Acquirer or any other aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final

Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, Defendants shall deliver to the United States an affidavit, signed by each defendant's Chief Financial Officer and General Counsel, which shall describe the fact and manner of Defendants' compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this

matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section X shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party

(including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time that Defendants furnish information or documents to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the Final Judgment and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and

unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of the Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section, (2) any appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of the Final Judgment, and (4) fees or expenses as called for in Paragraph XIII(C).

XIV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments

filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *ZF Friedrichshafen AG*, and *WABCO Holdings, Inc.*, Defendants.

Civil Action No.: 1:20-cv-00182

Judge: Hon. Ketanji B. Jackson

Competitive Impact Statement

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) (the "APPA" or "Tunney Act"), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On March 28, 2019, Defendant ZF Friedrichshafen AG ("ZF") agreed to acquire Defendant WABCO Holdings, Inc. ("WABCO") in a transaction that would unite two of the leading global suppliers of large commercial vehicle ("LCV") components. The United States filed a civil antitrust Complaint on January 23, 2020, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for the design, manufacture, and sale of LCV steering gears in North America, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to address the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, the Defendants are required to divest WABCO's wholly-owned subsidiary R.H. Sheppard Co., Inc. ("R.H. Sheppard") and other WABCO assets related to LCV steering gears. Under the terms of the Hold Separate, the Defendants will take certain steps to ensure that R.H. Sheppard is operated as a competitively independent, economically viable, and ongoing business concern, which will remain independent and uninfluenced by ZF, and that competition is maintained during the pendency of the required divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ZF is a German company headquartered in Friedrichshafen, Germany. It has 149,000 employees in 40 countries, and had annual sales of \$36.9 billion in 2018, \$9.6 billion of which were in the United States. ZF's North American business historically focused on the production and sale of transmissions to passenger and light vehicle manufacturers, but in 2015, ZF acquired a leading U.S. steering systems manufacturer, TRW, Inc. ZF's U.S. headquarters are in Livonia, Michigan.

WABCO is a Delaware corporation with a North American headquarters in Auburn Hills, Michigan, and a global headquarters in Bern, Switzerland. WABCO descends from the original Westinghouse Air Brake Company formed in 1869. It has 16,000 employees in 40 countries, and had annual sales in 2018 of \$3.8 billion, \$850 million of which were in the United States. WABCO's North American business historically focused on commercial vehicle air brake and air suspension components, but in 2017, WABCO acquired a leading U.S. commercial vehicle steering component company, R.H. Sheppard.

On March 28, 2019, pursuant to an agreement and plan of merger, ZF agreed to acquire WABCO in a deal valued at approximately \$7 billion.

B. The Competitive Effects of the Transaction

1. Background on LCV Steering Gears

Steering system components work together to direct a vehicle, and include steering gears, steering pumps, pitman arms, steering columns, steering linkages, and electronic steering controls. Steering equipment suitable for LCVs is sophisticated and highly engineered, especially the key component: Steering gears. LCVs include all trucks, buses, and off-road vehicles that weigh over 19,501 pounds (defined as Class 6-8 vehicles by the United States Department of Transportation (49 CFR 565.15)).

Steering gears are located below the steering column (which is attached to the steering wheel) and translate direction to the steering linkage. Steering gears for LCVs have a complex hydraulic power recirculating ball gear. Steering gears must be tuned carefully to operate within the specifications of the individual LCV's design and performance requirements, and must work together with the entire system of steering equipment.

Advanced LCV steering gears also include what is known as a torque overlay. A torque overlay adds hardware that enables the steering gear to quickly and independently direct the vehicle without the input of the steering column, and allows for advanced driver assistance system ("ADAS") steering features. ADAS technology in general includes features such as lane keeping assist, adaptive cruise control, automated emergency braking, blind spot detection, and other similar features. For ADAS steering features, torque overlay steering gears work with sensors and electronic controls that detect the environment around the vehicle and then work with the steering hardware to keep the vehicle on the correct path and avoid collisions. Within the last five years, truck and bus manufacturers have begun to use steering-related ADAS features, and both Defendants are actively engaged in research and development to improve steering-related ADAS features for eventual use in autonomous trucks and buses. In the future, steering-related ADAS features may be developed to the point where they can be combined with other ADAS technology related to braking and powertrain control, enabling the potential for fully autonomous operation of commercial vehicles. LCV steering gears will continue to be a key component as future ADAS technology is developed.

Truck and bus manufacturers are the primary customers for LCV steering gears. These customers incorporate LCV steering gears into the vehicle's final assembly, and then sell to end-use customers. Other LCV steering gear customers include manufacturers of commercial vehicles for off-road, military, mining, and agriculture uses. Typically, customers purchase LCV steering gears separately from other steering components, although they also may choose to purchase a whole steering system. In some cases, another entity may buy the LCV steering gear from one of the merging parties and then integrate it into a whole steering system that it sells to truck or bus manufacturers. Customers generally buy steering gears either based on pre-

established price lists or after a competitive bidding process. The annual size of the North American market for LCV steering gears is approximately \$220 million.

2. Relevant Product Market: LCV Steering Gears

As alleged in the Complaint, LCV steering gears must be durable and powerful enough to move large trucks or buses that utilize hydraulic steering systems without electronic power-assisted steering, because electronic power-assisted steering is not used on LCVs. This distinguishes LCV steering gears from lighter and simpler electronic steering gears used for smaller vehicles such as passenger cars. The quality and usefulness of an LCV steering gear is defined by several special characteristics, the most important of which are size, weight, torque required to move, and sensitivity, which relates to the ability of the gear to respond quickly and accurately to the driver or inputs from electronic controls.

The Complaint alleges that there are no other steering methods or technologies that can accomplish the required functions of LCV steering gears. Truck and bus manufacturers require the highly-capable LCV steering gears discussed above, because the lives and safety of drivers and other motorists, pedestrians, and property depend on the unflinching performance of an LCV steering gear to direct the vehicle. Other steering gears are less capable, and are therefore not a substitute for LCV steering gears purchased for use in LCVs in North America.

For the foregoing reasons, according to the Complaint, customers will not substitute less-capable steering gears, or any other product, for LCV steering gears in response to a small but significant and non-transitory increase in the price of LCV steering gears. The Complaint, therefore, alleges that LCV steering gears are a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

3. Relevant Geographic Market: North America

As alleged in the Complaint, LCV steering gears used in North America require a different design and alignment than those used outside North America. This is because of distinct truck and bus design differences, such as those related to higher weight and power, and a common configuration in which the cab is located behind the axles rather than over them. Because of these differences, the Complaint alleges that truck and bus

manufacturers strongly prefer LCV steering gears that have performed successfully on North American commercial vehicles, and have been unwilling to purchase steering gears used only in foreign markets. Customers also require their steering gear manufacturers to have an established North American presence for sales, service, and aftermarket support. Having an installed North American base helps customers to ensure that both in-house and third-party service technicians have experience with the relevant steering gears and have an existing spare parts inventory when gears need to be repaired or replaced. According to the Complaint, in the face of a small but significant and non-transitory price increase by North American producers of LCV steering gears, customers are unlikely to turn to manufacturers located outside North America and who produce LCV steering gears solely for markets outside North America. The Complaint therefore alleges that North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Anticompetitive Effects of the Proposed Transaction

As alleged in the Complaint, ZF and WABCO are the only firms that design, manufacture, and sell LCV steering gears in North America. After its acquisition of TRW in 2015, ZF became the leading North American firm selling steering systems and components for commercial vehicles. In the market for LCV steering gears in North America, it is estimated to have a 54 percent market share. WABCO is the only other market participant and has an estimated 46 percent market share. WABCO sells LCV steering gears through its wholly-owned R.H. Sheppard subsidiary, which it acquired in 2017. The Complaint alleges that the merger would give the combined firm a monopoly over LCV steering gears in North America, leaving North American customers without a sufficient competitive alternative for this critical component.

According to the Complaint, ZF and WABCO compete for sales of LCV steering gears on the basis of price, quality, service, innovation, and contractual terms such as delivery times. This competition has resulted in lower prices, higher quality, better service, and shorter delivery times. Competition between ZF and WABCO has also fostered innovation, leading to LCV steering gears with higher reliability and the innovative features such as torque overlay that are expected to be integral to the development of future ADAS technology, including

features for autonomous LCVs. The Complaint alleges that the combination of ZF and WABCO would eliminate this competition and its future benefits to truck and bus manufacturers and end-use customers. Post-transaction, the merged firm likely would have the incentive and ability to increase prices, lower quality or service, offer less favorable contractual terms, and reduce research and development efforts that would otherwise lead to innovative and high-quality products.

According to the Complaint, the proposed merger, therefore, likely would substantially lessen competition in the design, manufacture, and sale of LCV steering gears in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

5. Difficulty of Entry

The Complaint alleges that sufficient, timely entry of additional competitors into the market for LCV steering gears in North America is unlikely. Truck and bus manufacturers have shown little interest in buying steering gears and other components from anyone other than the only two established suppliers, ZF and WABCO, because of these companies' proven performance and North American presence.

According to the Complaint, production facilities and sales and service infrastructure for LCV steering gears require a substantial investment in both capital equipment and human resources. To be competitively viable, a new entrant would need to construct a factory to produce a range of steering components, establish production lines capable of manufacturing the components, and build assembly lines and establish or acquire access to testing equipment and facilities.

A new entrant also would need to retain engineering and research personnel to design, test, and troubleshoot the detailed manufacturing process necessary to produce LCV steering gears acceptable to North American customers. Any new LCV steering gears also would require extensive customer testing and qualification before they would be used by North American truck and bus manufacturers or accepted by end users. Moreover, because LCV steering gears now being designed and developed by ZF and WABCO are undergoing continuous technological improvement and innovation for use in the development of ADAS features, any new entrant would need to acquire equivalent expertise and proprietary technologies to enable steering-related ADAS features to be efficiently incorporated into the advanced

electronic control components of future North American LCVs. Finally, because customers prefer to use LCV steering gear manufacturers with an existing installed base to ensure efficient and quality service by customers' in-house or third-party service centers, a new entrant lacking an installed base would be at a severe disadvantage. The Complaint alleges that as a result of all of these barriers, entry would be costly and time-consuming.

The Complaint alleges that as a result of the barriers described above, entry into the market for LCV steering gears would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from the merger of ZF and WABCO.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the market for LCV steering gears in North America. Paragraph IV(A) of the proposed Final Judgment requires the Defendants, within the later of ninety (90) calendar days after the filing of the Complaint in this matter or thirty (30) calendar days after Regulatory Approvals have been received, to divest the entirety of WABCO's subsidiary R.H. Sheppard, as well as related WABCO assets, to an Acquirer acceptable to the United States in its sole discretion.¹ Paragraph IV(L) of the proposed Final Judgment requires that the Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the design, manufacture, and sale of LCV steering gears. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with prospective purchasers.

If the Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee

selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that the Defendants will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide periodic reports to the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the divestiture trustee and the United States will make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the trust, including by extending the trust or the term of the divestiture trustee's appointment.

The proposed Final Judgment contains several provisions to facilitate the immediate use of the Divestiture Assets by the Acquirer. Paragraph IV(I) of the proposed Final Judgment requires Defendants, at the Acquirer's option, to enter into a supply contract for the assembly of active steering electronic control units sufficient to meet all or part of the Acquirer's needs for a period of up to six (6) months. Upon Acquirer's request, the United States, in its sole discretion, may approve one or more extensions of any such agreement for a total of up to an additional six (6) months. In addition, Paragraph IV(J) of the proposed Final Judgment requires Defendants, at the Acquirer's option, to enter into a transition services agreement for back office, human resource, and information technology services and support for the Divestiture Assets for a period of up to twelve (12) months. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions for a total of up to an additional six (6) months if the Defendants notify the United States in writing at least three (3) months prior to the date the transition services contract expires. Finally, Paragraph IV(J) provides that employees of the Defendants tasked with providing any transition services must not share any competitively sensitive information of the Acquirer with any other employee of the Defendants.

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer's efforts to hire the employees involved in the R.H. Sheppard business, including any additional WABCO employees, wherever located, involved in the

design, manufacture, or sale of LCV steering gears. Paragraph IV(C) of the proposed Final Judgment requires the Defendants to provide the Acquirer with organization charts and information relating to these employees and make them available for interviews, and provides that Defendants will not interfere with any negotiations by the Acquirer to hire them. In addition, Paragraph IV(D) provides that for employees who elect employment with the Acquirer, the Defendants, subject to exceptions, shall waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which the employees would generally be provided if transferred to a buyer of an ongoing business. The paragraph further provides that, for a period of 12 months from the filing of the Complaint, the Defendants may not solicit to hire, or hire any such person who was hired by the Acquirer, unless such individual is terminated or laid off by the Acquirer or the Acquirer agrees in writing that Defendants may solicit or hire that individual.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, the Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that the Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition that would otherwise be harmed by the transaction. The Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as

¹ Paragraph II(C) of the proposed Final Judgment defines Regulatory Approvals as "(i) any approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States ("CFIUS"), or under antitrust or competition laws required for the Transaction to proceed; and (ii) any approvals or clearances pursuant to filings with CFIUS, or under antitrust, competition, or other U.S. or international laws required for Acquirer's acquisition of the Divestiture Assets to proceed."

interpreted in light of this procompetitive purpose.

Paragraph XIII(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that the Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph XIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that the Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four (4) years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and the Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has

suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: John R. Read, Acting Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against ZF's acquisition of WABCO. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the design, manufacture, and sale of LCV steering gears in North America. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev*

N.V./S.A., No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable”).

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government’s complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not “make de novo determination of facts and issues.” *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, “[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.” *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). “The court should bear in mind the flexibility of the public interest inquiry: The court’s function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.” *Microsoft*, 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would “have enormous practical consequences for the government’s ability to negotiate future settlements,” contrary to congressional intent. *Id.* at 1456. “The Tunney Act was not intended to create a disincentive to the use of the consent decree.” *Id.*

The United States’ predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft*, 56 F.3d at 1461 (recognizing courts should give “due respect to the Justice Department’s . . . view of the nature of its case”); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (“In

evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.”) (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting “the deferential review to which the government’s proposed remedy is accorded”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (“A district court must accord due respect to the government’s prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.”). The ultimate question is whether “the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest.’” *Microsoft*, 56 F.3d at 1461 (quoting *W. Elec. Co.*, 900 F.2d at 309).

Moreover, the Court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“[T]he ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108–237 § 221, and added the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15

U.S.C. 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). “A court can make its public interest determination based on the competitive impact statement and response to public comments alone.” *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January 23, 2020

Respectfully submitted,

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[FR Doc. 2020–01759 Filed 1–30–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin—Phase 2

Notice is hereby given that, on January 10, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for