Bank and Trust, FSB, Decatur, Illinois, from a federal savings bank to a commercial bank.

Board of Governors of the Federal Reserve System, May 12, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–11757 Filed 5–14–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 141–0235]

ZF Friedrichshafen AG and TRW Automotive Holdings Corp; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 5, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/zftrwautomativeconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''ZF Friedrichshafen AG's and TRW Automotive Holdings Corp.—Consent Agreement; File No. 141–0235'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/zftrwautomativeconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''ZF Friedrichshafen AG's and TRW Automotive Holdings Corp.—Consent Agreement; File No. 141–0235'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Stephen Antonio, Bureau of Competition, (202–326–2536), 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 5, 2015), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 5, 2015. Write ''ZF Friedrichshafen AG's and TRW Automotive Holdings Corp.—Consent Agreement; File No. 141–0235'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/zftrwautomativeconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''ZF Friedrichshafen AG's and TRW Automotive Holdings Corp.—Consent Agreement; File No. 141–0235'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 5, 2015. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order To Aid Public Comment

Introduction

The Federal Trade Commission (''Commission'') has accepted from ZF Friedrichshafen AG (''ZF'') and TRW Automotive Holdings Corp. (''TRW''), subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') designed to remedy the anticompetitive effects resulting from ZF's proposed acquisition of TRW.

Pursuant to an Agreement and Plan of Merger dated September 15, 2014, the parties agreed that ZF would acquire TRW for $105.60 per share in an all-cash deal valued at approximately $12.4 billion (''the Acquisition''). The proposed Acquisition would result in a duopoly in the heavy vehicle tie rod market. The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the market for heavy vehicle tie rods in North America.

Under the terms of the proposed Decision and Order (''Order'') contained in the Consent Agreement, the parties are required to divest TRW's Linkage and Suspension Business in a manner, and to an acquirer, that meets Commission approval. The divestiture package includes five manufacturing facilities in North America and Europe, along with related assets including intellectual property. The acquirer also has the option to enter into transitional services and supply agreements. The Consent Agreement provides an acquirer with everything needed to compete effectively in the North American heavy vehicle tie rod market. The parties must complete the divestiture within six months of executing the Consent Agreement.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

The Parties

Headquartered in Friedrichshafen, Germany, ZF is a privately held global automotive and industrial products manufacturer. ZF makes light and heavy vehicle components for the powertrain, chassis, and driveline. ZF designs, manufacturers, and sells heavy vehicle tie rods, amongst several other products, in its chassis division.

Headquartered in Livonia, Michigan, TRW sells chassis systems, electronic systems, passive occupant safety systems, and other automotive components. Like ZF, TRW designs, manufactures, and sells heavy vehicle tie rods.

The Relevant Product and Market Structure

The relevant line of commerce in which to analyze the effects of the Acquisition is heavy vehicle tie rods. A heavy vehicle is generally defined as one that weighs six tons or more, and a tie rod is a rigid connecter that links a vehicle's individual wheels with the steering control mechanism. Customers and other market participants did not identify any substitutes for heavy vehicle tie rods.

North America is the relevant geographic market in which to analyze the effects of the Acquisition on the heavy vehicle tie rod market. The size and weight of heavy vehicle tie rods generally make it uneconomical to ship them long distances. Customers interviewed primarily consider manufacturers in North America, and have found more distant firms uncompetitive for reasons including: (1) Price; (2) logistics; and (3) quality. Therefore, North America is the relevant geographic market.

The market for heavy vehicle tie rods in North America is highly concentrated. It is served primarily by ZF, TRW, and USK Internacional S.A. DE C.V. (''Urresko''). These three firms have a share of nearly 99% of the market based on unit sales. The merger would reduce the number of competitors from three to two, and increase the Herfindahl-Hirschman Index from 4,218 to 5,046, an increase of 828.

Entry

Entry into the North American heavy vehicle tie rod market is not likely to deter or counteract any anticompetitive effects of the proposed Acquisition. Entry is unlikely in light of the relatively small market size, strong position of incumbents, high capital costs, switching costs, and knowledge barriers that exist. The parties did not identify any likely entrants, and those firms best situated for entry—manufacturers of related heavy vehicle components—expressed no interest in entering the North American heavy vehicle tie rod market.

Effects of the Acquisition

The proposed Acquisition would increase the likelihood of coordinated interaction among the remaining competitors in the North American heavy vehicle tie rod market. The combined company would have only one remaining significant competitor in North America, Urresko. Reducing the number of competitors from three to two would eliminate much uncertainty and make it easier for the remaining firms to reach agreement on terms of coordination, whether the coordination focuses on customer allocation, price, or some other aspect of competition.

Additionally, the proposed Acquisition would eliminate direct competition between ZF and TRW, resulting in the increased probability that customers would pay higher prices for heavy vehicle tie rods. In the past, customers have been able to use competition between ZF and TRW to obtain better prices by obtaining competing bids. Customers have also switched between ZF and TRW. That competition would be lost absent the merger.

The Consent Agreement

The Consent Agreement eliminates the competitive concerns raised by ZF's proposed acquisition of TRW by requiring the parties to divest TRW's North American and European Linkage and Suspension Business (''the L&S Business''). The proposed divestiture includes everything needed for an acquirer to compete effectively in the North American market for heavy vehicle tie rods, and also includes additional products that ensure the business will be viable. Given the robust nature of the divested business, the Commission is confident that a post-order divestiture is sufficient to protect its interest in restoring competition.

Pursuant to the Order, the parties are required, no later than six months from execution of the Consent Agreement, to divest the L&S Business to a Commission-approved acquirer. That business consists of both heavy and light vehicle components, and includes—in addition to tie rods—control arms, ball joints, stabilizer links, conventional steering linkages, drag links, V-links, radius rods, and I-shafts. The divestiture buyer will receive all rights and assets relating to the L&S Business, including five TRW manufacturing facilities, Portland (U.S.), Tillsonburg-Plant 2 (Canada), St. Catharines (Canada), Dacice (Czech Republic), and Krefeld-Gellep (Germany), as well as leased space previously occupied by L&S research

and development at TRW's Dusseldorf Tech Center. The divested assets also include intellectual property rights as well as all books, records, and confidential business information related to the L&S Business.

To ensure that the divestiture is successful, the Order requires the parties to provide transition services such as logistical and administrative support at the option of the acquirer. Moreover, the acquirer will have the option to enter into a transition supply agreement with the parties for key manufacturing inputs necessary to perform existing customer contracts. The Consent Agreement also includes other standard terms designed to ensure the viability of the divestiture, including requirements that the parties assist the acquirer in hiring the existing work force of the business, and refrain from soliciting those employees for up to two years.

Given the robustness of the divested business and the protections contained in the Order, the Commission is confident that a post-order divestiture will be sufficient to preserve competition. The L&S Business has been run largely as a standalone business within TRW, and potential buyers have confirmed that the divested assets include everything necessary to compete effectively as a viable business. Similarly, potential customers have confirmed that an acquirer of the L&S Business would be a workable option as a supplier.

To ensure compliance with the Order, the Commission will appoint an Interim Monitor to oversee ZF's and TRW's performance of their obligations pursuant to the Consent Agreement, and to keep the Commission informed about the status of the divestiture. The Order also allows the Commission to appoint a Divestiture Trustee to accomplish the divestiture if the parties fail to divest within the required timeframe. Lastly, the Consent Agreement contains standard reporting requirements and terminates in ten years.

The Commission has also issued an Order to Hold Separate and Maintain Assets to protect the assets until they are divested. During the hold separate period, the parties must fund the business' operations, including capital projects, according to existing plans. To ensure compliance with the Hold Separate Order, a Commission-approved Hold Separate Monitor will oversee the L&S Business during the interim period.

Opportunity for Public Comment

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

By direction of the Commission, Commissioner Wright dissenting.

Donald S. Clark,

Secretary.

Statement of the Federal Trade Commission

In the Matter of ZF Friedrichshafen AG and TRW Automotive Holdings Corp.

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 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

[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 the Merger Guidelines is 2,500. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.3 (2010).

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]

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 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

[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 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.'').

[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.

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.

Separate Statement of Commissioner Maureen K. Ohlhausen

ZF Friedrichshafen AG/TRW Automotive Holdings Corp.

I voted in favor of issuing for public comment the proposed consent agreement in this matter. As discussed below, there is sufficient evidence to provide me with a reason to believe that, absent a remedy, the transaction is likely to violate Section 7 of the Clayton Act. I also find that the proposed consent, which is intended to remedy any such violation, is in the public interest.

Based on the evidence presented to me—including the evidence discussed in the Analysis to Aid Public Comment and the majority statement in this matter—I am satisfied that the ''reason to believe'' prong that the Commission must assess in issuing a complaint, including in the consent context, is met here. It is important to note that the Commission makes the reason to believe determination before a full evidentiary and legal record is developed during a trial on the merits, which suggests that the standard must necessarily be lower than what the Commission or a court should apply for finding ultimate liability. Individual Commissioners, of course, have different views on how much evidence is necessary to satisfy the reason to believe standard. Unfortunately, there does not appear to be a consensus view on what the standard requires. I respect Commissioner Wright's view that the standard was not met for him in this case. For the reasons identified in the majority statement in this matter, I determined that there is a credible basis on which to conclude that this merger may enhance the vulnerability to coordinated effects that already exists in the relevant market at issue.[1]

I further view this consent to be in the public interest. In my time as a Commissioner, I have advocated for transparency, predictability, and fairness across a variety of settings.[2] Those three critical goals apply equally to the merger context. A practical problem in our merger review process arises, however, where investigations are cut short by the merging parties, which, for business, strategic, or other reasons, offer staff and then ultimately the Commission a proposed remedy in lieu of responding to a Second Request or other compulsory process. In such cases, the available evidence may be sufficient to provide reason to believe the proposed transaction would violate Section 7, but a full investigation might (or might not) reveal additional evidence sufficient to counterbalance the available evidence and support closing the investigation altogether. In that situation, the goals of predictability and fairness counsel against forcing merging parties (and Commission staff) to incur the significant costs associated with a full-phase investigation. Merging parties also expend non-trivial amounts of time and money in developing and then proposing remedies to FTC staff; those good-faith efforts—particularly ones that involve coordination of remedies across antitrust jurisdictions—should not be discounted. The public interest analysis thus should take into account the need for predictability and fairness for merging parties in these circumstances.

[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.*

[1] *See 2010 Horizontal Merger Guidelines* § 7.1.

[2] Those settings have included the use of disgorgement in competition cases, the proper scope of our standalone Section 5 authority, the intersection of intellectual property and antitrust, and the treatment of U.S. businesses by foreign antitrust jurisdictions. *See, e.g.,* Dissenting Statement of Commissioner Maureen K. Ohlhausen, *In re* Cardinal Health, Inc., FTC File No. 101–0006 (Apr. 17, 2015), *available at https://www.ftc.gov/public-statements/2015/04/dissenting-statement-commissioner-maureen-k-ohlhausen-cardinal-health-inc* (dissenting from consent involving disgorgement of profits for alleged Section 2 violation); Maureen K. Ohlhausen, *Section 5 of the FTC Act: Principles of Navigation,* 2 J. Antitrust Enforcement 1 (2014), *available at http://www.ftc.gov/public-statements/2013/10/section-5-ftc-act-principles-navigation-0* (advocating for additional guidance on the FTC's use of its standalone Section 5 authority); Dissenting Statement of Commissioner Maureen K. Ohlhausen, *In re* Motorola Mobility LLC & Google, Inc., FTC File No. 121–0120 (Jan. 3, 2013), *available at https://www.ftc.gov/public-statements/2013/01/statement-commissioner-maureen-ohlhausen-0* (dissenting from consent involving standalone Section 5 claim against holder of standard-essential patents); Testimony of Commissioner Maureen K. Ohlhausen, ''The Foreign Investment Climate in China: U.S. Administration Perspectives on the Foreign Investment Climate in China,'' before the U.S.-China Economic and Security Review Commission (Jan. 28, 2015), *available at https://www.ftc.gov/public-statements/2015/01/testimony-commissioner-maureen-k-ohlhausen-hearing-foreign-investment* (discussing importance of foreign antitrust jurisdictions pursuing the goals of predictability, transparency, and fairness).

Dissenting Statement of Commissioner Joshua D. Wright

In the Matter of ZF Friedrichshafen AG and TRW Automotive Holdings Corp.

The Commission has voted to issue a Complaint and Decision & Order against ZF Friedrichshafen AG (''ZF'') to remedy the allegedly anticompetitive effects of ZF's proposed acquisition of TRW Automotive Holdings Corp. (''TRW''). I respectfully dissent because the evidence is insufficient to provide reason to believe ZF's acquisition will substantially lessen competition for heavy vehicle tie rods sold in North America. In particular, I believe the Commission has not met its burden to show that the acquisition will result in an increased likelihood of harm from coordinated effects or from unilateral effects. As a consequence, the Commission should close the investigation and allow the parties to complete the proposed transaction without imposing a remedy.

I write separately today to explain my vote and to discuss the quality and quantity of evidence necessary to support a coordinated and unilateral effects challenge under the 2010 *Horizontal Merger Guidelines* (''*Merger Guidelines*'').

The Complaint alleges the proposed transaction increases the likelihood of coordinated effects and unilateral effects in the market for heavy vehicle tie rods sold in North America.[1] After the proposed transaction, ZF and TRW would have a combined 41% share. The remaining competitor, Urresko, has a 58% share. Fringe suppliers have a 1% share.

I. Coordinated Effects Are Unlikely in the Relevant Market

The Complaint implicates an important question with regard to coordinated effects: What evidence is necessary to establish reason to believe a proposed transaction may substantially lessen competition by ''enabling or encouraging post-merger coordinated interaction among firms in the relevant market that harms customers.'' [2]

[1] Compl. ¶ 12, ZF Friedrichshafen AG, FTC File No. 141–0235 (May 5, 2015).

[2] U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 7 (2010) [hereinafter Merger Guidelines].

The *Merger Guidelines* offer three conditions that, if satisfied, suggest the agency is likely to challenge a merger upon the basis that it will result in an increased likelihood of competitive harm from coordination. The *Merger Guidelines* specify that the agencies are likely to challenge a merger if: (1) ''the merger would significantly increase concentration and lead to a moderately or highly concentrated market;'' [3] (2) the ''market shows signs of vulnerability to coordinated conduct;'' [4] and (3) ''the Agencies have a credible basis on which to conclude that the merger may enhance that vulnerability.'' [5]

The second and third conditions are at issue here and worthy of further discussion.

The record evidence is mixed with respect to the second condition, whether the market shows signs of vulnerability to coordinated conduct. Evidence that the market is generally conducive to coordinated interaction includes the fact that heavy vehicle tie rods are fairly homogeneous goods and are purchased using relatively short-term contracts.

Also potentially germane to assessing the vulnerability of the relevant market to coordinated conduct are previous episodes of coordination by the same players in different markets. In 2012, a German subsidiary of TRW Automotive, TRW Deutschland Holding GmbH, pled guilty to a conspiracy to fix prices of seatbelts, airbags, and steering wheels sold to two German automobile customers for vehicles manufactured or sold in the United States.[6] While this prior episode does not involve the same relevant product or geographic markets as the current matter, it might suggest some vulnerability to coordination.[7]

There are other considerations, however, that indicate the market for heavy vehicle tie rods is not particularly vulnerable to coordination. First, while the product might be fairly homogeneous, there are significant switching costs including the time and cost involved with validation testing of the new supplier's tie rods. All else equal, significant switching costs make markets less vulnerable to coordination because they diminish firms' ability to punish effectively deviations from the coordinated price. Second, cost and demand fluctuations appear to be relatively frequent and large, which increase the information costs needed to detect accurately deviations.[8] Third, Urresko is a relatively recent entrant and has become the largest supplier in the market. These types of disruptive market events are generally not conducive to successful coordinated interactions. Finally, there are a number of large buyers, which can result in dramatic market share swings if a supplier loses the majority of a buyer's business. While the record evidence with respect to vulnerability of the relevant market is certainly mixed at best, it would not be unreasonable to find the second prong in the *Merger Guidelines* satisfied.

Ultimately, however, I do not have reason to believe the proposed transaction is likely to result in coordinated effects because the record evidence does not satisfy the third condition—that is, there is no ''credible basis on which to conclude that the merger may *enhance''* any pre-merger vulnerability to coordination.

The *Merger Guidelines* provide the acquisition of a maverick firm as one illustrative example of the type of evidence that would satisfy this third condition. There is no evidence that either ZF or TRW is a maverick firm as contemplated by the *Merger Guidelines.*

The sole evidence offered in favor of the proposition that the proposed transaction will *enhance* the market's vulnerability to coordination is that the merger will reduce the number of firms in the relevant market from three to two. I do not agree that a reduction of firms from three to two, without more, is enough to provide ''a credible basis to conclude that the merger may *enhance* that vulnerability.'' The observation that a market with N firms will, after the merger, have N–1 firms, is simply insufficient without more to establish the required credible basis under the *Merger Guidelines.* This is true even when a merger reduces the number of firms from three to two. The Commission offers no explanation as to why the *Merger Guidelines* would go through the trouble of requiring a credible basis to believe a merger will change the market's competitive dynamics that *enhances* the market's vulnerability to coordinated conduct, *in addition to* an increase in market concentration, in order to substantiate a coordinated effects merger challenge if the latter were considered sufficient to satisfy both elements.[9]

As I have stated previously, ''there is no basis in modern economics to conclude with any modicum of reliability that increased concentration—without more—will increase post-merger incentives to coordinate. Thus, the *Merger Guidelines* require the federal antitrust agencies to develop additional evidence that supports the theory of coordination and, in particular, an inference that the merger increases incentives to coordinate.'' [10] Janusz Ordover, in a leading treatment of the economics of coordinated effects, similarly explains that ''It is now well understood that it is not sufficient when gauging the likelihood of coordinated effects from a merger to simply observe that because the merger reduces the number of firms, it automatically lessens the coordination problem facing the firms and enhances

[3] *Id.* § 7.1.

[4] *Id.*

[5] *Id.*

[6] Plea Agreement ¶ 4(e)–(f), United States v. TRW Deutschland Holding GmbH, No. 2:12–cr–20491–GCS–PJK (E.D. Mich. Sept. 25, 2012).

[7] The *Merger Guidelines* state that ''The Agencies presume that market conditions are conducive to coordinated interaction if firms representing a substantial share in the relevant market appear to have previously engaged in express collusion affecting the relevant market,'' but that prior ''express collusion in another geographic market will have the same weight if the salient characteristics of that other market at the time of the collusion are comparable to those in the relevant market,'' and that prior 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.'' Merger Guidelines, supra note 2, § 7.2. Thus, I am comfortable with concluding the prior TRW Deutschland price-fixing case is material to our investigation, and that this evidence increases the likelihood of coordination, all things equal. However, without a more detailed assessment of any logical connection between the markets where collusion actually took place and the relevant market here, I am hesitant to give this factor alone substantial weight given observable differences between the markets. For instance, in the markets at issue in that case, the bidding process appeared to be more formal with longer commitments. *See* Information ¶ 8, United States v. TRW Deutschland Holding GmbH, No. 2:12–cr–20491–GCS–PJK (E.D. Mich. July 30, 2012).

[8] For instance, the primary input to produce heavy vehicle tie rods is steel. Looking at the producer price index for steel mill products, the average annual price change over the past ten years is 1.6% with a standard deviation of 6.6%. Some of the specific yearly changes are substantial, *e.g.,* −8.6%, 7.5%, 9.1%, 12.8%. *Producer Price Index—Metals and Metal Products,* U.S. Bureau of Labor Statistics, *http://www.bls.gov/regions/mid-atlantic/data/ProducerPriceIndexMetals_US_Table.htm* (last visited May 8, 2015).

[9] The Commission cites Carl Shapiro to support the proposition that market concentration is relevant to coordinated effects analysis. *See* Statement of the Federal Trade Commission 2 n.4, ZF Friedrichshafen AG, FTC File No. 141–0235 (May 8, 2015) (quoting Carl Shapiro, *The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years,* 77 Antitrust L.J. 701, 708 (2010) (''In particular, as the revised Guidelines explain, the Agencies place considerable weight on HHI measures in cases involving coordinated effects.'')). I agree. The 2010 *Merger Guidelines* establish market concentration as one of three conditions that must be satisfied to find coordinated effects. What Shapiro does not state, and the proposition the Commission does not otherwise substantiate, is that evidence of changes in market concentration is sufficient to satisfy the third condition along with the first.

[10] Dissenting Statement of Commissioner Joshua D. Wright 3, Fidelity National Financial, Inc., FTC File No. 131–0159 (Dec. 23, 2013).

their incentives to engage in tacit collusion; far from it.'' [11] The required additional evidence needed to satisfy the third condition is absent in this case.

II. Unilateral Effects Are Unlikely in the Relevant Market

The sole evidence offered in favor of the Commission's allegation that the merger will render unilateral price effects likely is that some customers have used the competition between ZF and TRW to obtain better pricing and some customers have switched between the two suppliers.[12] While this is certainly material to our inquiry, this is a thin reed, without more, upon which to base a unilateral price effects case. There is no information on price effects. Moreover, there is no substantial evidence on the record with respect to the role the market leader, Urresko, plays in disciplining prices. The fact that Urresko is a recent entrant and has become the market leader in a relatively short period of time also renders dubious the proposition that barriers to entry in the relevant market are adequate to sustain a post-merger price increase. Additionally, even with sufficient barriers, Urresko's rapid growth undermines significantly any unilateral effects argument and suggests a post-merger price increase from a merged ZF–TRW would be fragile and potentially unsuccessful. The *Merger Guidelines* contemplate the possibility of intense competition in markets with small numbers of firms, observing that ''Even a highly concentrated market can be very competitive if market shares fluctuate substantially over short periods of time in response to changes in competitive offerings.'' [13]

Moreover, unilateral effects in a homogeneous goods market principally involve reductions in output.[14] In order to be profitable, the reduction in output must not be met by a sufficient supply response by rivals. Thus, absent meaningful capacity constraints, unilateral effects are less likely in homogeneous goods markets. I have seen no evidence that Urresko is capacity constrained.

III. Conclusion

The Commission insists that a different ''lens'' should be used to evaluate evidence in markets where the number of firms is reduced by merger to three or two.[15] The Commission cites in support of its structural theory and presumption three academic articles written by economists.[16] Only two offer economic evidence and the proffered substantiation fails to support the claim. The first is an important early entrant into the static entry literature examining the relationship between market size and the number of entrants in a market, focusing upon isolated rural markets.[17] It strains credulity to argue that Bresnahan and Reiss's important analysis of the impact of entry in markets involving doctors, dentists, druggists, plumbers, and tire dealers in local and isolated areas, where they find the competitive benefits of a second competitor are especially important, apply with generality sufficient to support a widely applicable presumption of harm based upon the number of firms. Indeed, the authors warn against precisely this interpretation of their work.[18]

The second is a laboratory experiment and does not involve the behavior of actual firms and certainly cannot provide sufficient economic evidence to support a presumption that four-to-three and three-to-two mergers in real-world markets will result in anticompetitive coordination.[19] Once again, the authors warn against such an interpretation.[20]

Finally, the Commission cites a draft article, authored by Steve Salop, in support of its view that economic evidence supports a presumption that four-to-three and three-to-two mergers are competitively suspect.[21] The article does not purport to study or provide new economic evidence on the relationship between market structure and competition. Thus, it cannot support the Commission's proposition.[22] In sum, there is simply no empirical economic evidence sufficient to warrant a *presumption* that anticompetitive coordination is likely to result from four-to-three or three-to-two mergers.

It is important to note that the Commission and I have no disagreement over the proposition that the number of competitors within a market is a relevant fact to assess the likely competitive effects of a transaction. The relevant question is not whether the number of firms matters but how much it matters—and in particular, whether a movement to three or two firms warrants a generally applicable presumption that a transaction is more likely than not to harm competition. I do not believe it does. The Commission disagrees.

The *Merger Guidelines* make clear that the purpose of market concentration and market shares associated thresholds ''is not to provide a rigid screen to separate competitive benign mergers from anticompetitive ones, although high levels of concentration do raise concerns.'' [23]

[11] Janusz A. Ordover, *Coordinated Effects, in* 2 Issues in Competition Law and Policy 1359, 1367 (ABA Section of Antitrust Law 2008) (''It is quite clear . . . that a reduction in the number of firms and concomitant increases in concentration do not necessarily make collusion inevitable or even more likely, stable, or complete.'').

[12] *See* Analysis of Agreement Containing Consent Order to Aid Public Comment 2, ZF Friedrichshafen AG, FTC File No. 141–0235 (May 5, 2015).

[13] Merger Guidelines § 5.3, *supra* note 2.

[14] *See id.* § 6.3.

[15] *See* Statement of the Federal Trade Commission, *supra* note 9, at 2.

[16] *Id.* at 2 n.5.

[17] Timothy F. Bresnahan & Peter C. Reiss, *Entry and Competition in Concentrated Markets,* 99 J. Pol. Econ. 977 (1991). While Bresnahan and Reiss is an important early contribution to the static entry literature, it cannot possibly bear the burden the Commission wishes to place upon it. Abstracting from the complexities of market definition was necessary for the researchers to isolate entry decisions. This is possible when studying the effects of entry by a second dentist in a town with a population of less than 1,000, but not in most real-world antitrust applications. The authors of the study make this point themselves, noting that ''whether this pattern appears in other industries remains an open question.'' *Id.* at 1007.

[18] In earlier research using similar empirical techniques and data—namely, small rural markets—Bresnahan and Reiss plainly reject the notion that the findings should inform views of market structure and competition generally: ''We do not believe that these markets 'stand in' for highly concentrated industries in the sectors of the economy where competition is national or global.'' Timothy F. Bresnahan & Peter C. Reiss, *Do Entry Conditions Vary Across Markets,* 3 Brookings Papers Econ. Activity 833, 868 (1987).

[19] Steffen Huck et al., *Two Are Few and Four Are Many: Number Effects from Experimental Oligopolies,* 53 J. Econ. Behavior & Org. 435 (2004).

[20] *Id.* at 436 (''The number of firms is not the only factor affecting competition in experimental markets. This implies that there exists no unique number of firms that determines a definite borderline between non-cooperative and collusive markets irrespective of all institutional and structural details of the experimental markets.'').

[21] Steven C. Salop, *The Evolution and Vitality of Merger Presumptions: A Decision-Theoretic Approach* (Georgetown Law Faculty Publications and Other Works, Working Paper No. 1304, 2014), *available at http://scholarship.law.georgetown.edu/facpub/1304/.*

[22] Nevertheless, to the extent Salop argues in favor of legal presumptions in merger analysis, he clarifies that they ''obviously should be based on valid economic analysis, that is, proper economic presumptions,'' which should be updated ''based on new or additional economic factors besides market shares and concentration.'' *Id.* at 37, 48. I agree. Additionally, Salop explains that ''[c]ontemporary economic learning suggests that concentration be considered when undertaking competitive effects analysis—in conjunction with other factors suggested by the competitive effects theory—but not treated as the sole determinant of post-merger pricing.'' *Id.* at 13–14. Notably, Salop does not endorse a distinction between four-to-three mergers or three-to-two mergers and mergers in less concentrated markets that justifies a presumption that the former are anticompetitive; rather, he merely observes that empirical evidence and economic theory do not warrant ''*ignoring* market shares and concentration in merger analysis.'' *Id.* at 12 (emphasis in original).

[23] Merger Guidelines, *supra* note 2, § 5.3.

Rather concentration is but one aspect of the inquiry aimed at better understanding post-merger incentives to compete. The predictive power of market share and market concentration data is informed by economic theory and available empirical evidence. There is no empirical evidence sufficient to establish a generally applicable presumption that mergers that reduce the number of firms to three or two are likely to harm competition.[24] Further, the Commission's reliance upon such shorthand structural presumptions untethered from empirical evidence subsidize a shift away from the more rigorous and reliable economic tools embraced by the *Merger Guidelines* in favor of convenient but obsolete and less reliable economic analysis.

This is not to say that evidence of changes in market structure cannot ever warrant such a presumption. It does when the evidence warrants as much. The Commission has in certain contexts found reason to believe competition would be substantially lessened based simply upon a reduction of firms in the relevant market. See *Actavis plc-Forest Laboratories* [25] and also *Akorn-Hi-Tech Pharmacal,*[26] which both involve generic pharmaceutical markets. The Commission was able to draw conclusions about the relationship between price and the number of firms in generic pharmaceutical markets because substantial research has been done to establish that such a relationship exists.[27] Indeed, the cases in the pharmaceutical industry are the exceptions that prove the rule that the Commission needs to do more than count the number of firms in a market to have reason to believe a substantial lessening of competition is likely. No such research has been done in this market. Accordingly, unlike in generic pharmaceutical markets, we have no evidence to conclude that a simple reduction in the number of firms in this market is likely to lead to higher prices and lower output. Simply assuming such a relationship exists in this market without any evidence to suggest that it does harkens back to the bad old days of the first half of the 20th century, when the structure-conduct-performance paradigm was in vogue.

To summarize, there are three-to-two mergers that give rise to unilateral effects, and three-to-two mergers that give rise to coordinated effects. It is our burden to show that *this* three-to-two merger is likely anticompetitive. The Commission must find sufficient evidence to support an inference of likely economic harm to consumers. The heavy degree of reliance upon a structural presumption in this case is not sufficient to do so.

Finally, the Commission and Commissioner Ohlhausen each claim that the quantity, and presumably the quality, of the evidence is not the same for investigations truncated by remedy proposals compared to cases where a full phase investigation is completed or compared to a completed trial, respectively.[28] While this observation is an accurate description of the pragmatic reality of conducting law enforcement investigations, I do not agree with the implication that the quantum and quality of evidence needed to satisfy the ''reason to believe'' standard should turn on whether and when a remedy proposal is offered during an investigation. The idea is that we should ''take into account the need for predictability and fairness for merging parties in these circumstances'' [29] and considerations whether it is ''appropriate to subject the parties to the added expense and delay of a full phase investigation.'' [30] I fully support the agency identifying opportunities to lower the administrative costs of antitrust investigations and believe there to be ample opportunity to do so. But attempts to operate a more efficient law enforcement system must satisfy the constraint, required by law, that there is reason to believe a transaction violates Section 7 of the Clayton Act. That standard sets a relatively low bar for the minimum level of evidence required to substantiate a merger challenge. I reject the view that it should be a standard that should be relaxed because the merging parties offer a remedy.[31] The Commission is primarily a law enforcement agency, albeit one that largely conducts it business by entering into consents with merging parties. Making the consent process more efficient and predictable is a laudable goal; but we must not allow pursuit of a more efficient consent process to distort our evaluation of the substantive merits. To do so, as in my view we have here, risks in the long run reducing the institutional capital of the agency in magnitudes far greater than any potential cost savings from truncating an investigation.

For these reasons, I cannot join my colleagues in supporting the consent order because I do not have reason to believe the transaction violates Section 7 of the Clayton Act nor that a consent ordering divestiture is in the public interest.

[24] *See* Statement of Commissioner Joshua D. Wright 3–5, Holcim Ltd., FTC File No. 141–0129 (May 8, 2015).

[25] Analysis of Agreement Containing Consent Orders to Aid Public Comment 2, Actavis plc, FTC File No. 141–0098 (June 30, 2014) (''In generic pharmaceutical product markets, price generally decreases as the number of generic competitors increases. Accordingly, the reduction in the number of suppliers within each relevant market would likely have a direct and substantial anticompetitive effect on pricing.'').

[26] Analysis of Agreement Containing Consent Orders to Aid Public Comment 3, Akorn Enterprises, Inc., FTC File No. 131–0221 (Apr. 14, 2014) (''In generic pharmaceuticals markets, price is heavily influenced by the number of participants with sufficient supply.'').

[27] *See* David Reiffen & Michael R. Ward, *Generic Drug Industry Dynamics,* 87 Rev. Econ. & Stat. 37 (2005). As an aside, given that we are now ten years removed from the publication of this important study and over twenty years removed from the sample period, it might be worth revisiting this question with fresher data if the Commission intends to continue relying upon inferences of competitive harm from market structure in the generic pharmaceutical market.

[28] *See* Statement of the Federal Trade Commission, *supra* note 9, at 3 n.7; *see also* Separate Statement of Commissioner Maureen K. Ohlhausen 1, ZF Friedrichshafen AG, FTC File No. 141–0235 (May 8, 2015).

[29] Separate Statement of Commissioner Maureen K. Ohlhausen, *supra* note 28, at 2.

[30] Statement of the Federal Trade Commission, *supra* note 9, at 3 n.7.

[31] That said, as I stated in *Holcim Ltd.,* I am not suggesting the ''reason to believe'' standard ''requires access to every piece of relevant information and a full and complete economic analysis of a proposed transaction, regardless of whether the parties wish to propose divestitures before complying with a Second Request.'' *See* Statement of Commissioner Joshua D. Wright, *supra* note 24, at 11.

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FEDERAL TRADE COMMISSION

[File No. 141 0129]

Holcim Ltd. and Lafarge S.A.; Analysis of Proposed Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 4, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/holcimlafargeconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Holcim Ltd. and Lafarge