EXHIBIT A

ZF Meritor LLC and Meritor Transmission Corporation v. Eaton Corporation

Civ. No. 06-623-SLR

PRELIMINARY JURY INSTRUCTIONS – DAMAGES PHASE

Introduction

Members of the Jury:

Now that you have been sworn in, I have the following preliminary instructions for guidance on your role as jurors in this case.

This is a lawsuit arising under the federal antitrust laws known as the Sherman Act and the Clayton Act. This is a civil case, not a criminal case. The civil antitrust laws regulate competition. Their purpose is to encourage and protect vigorous and open competition in the sale of products and services, among other things. The antitrust laws rest on the central premise that competition produces the best allocation of our economic resources, the lowest prices, the highest quality, and the greatest material progress.

This lawsuit was filed in 2006 by two separate companies—Meritor Transmission Corporation and ZF Meritor LLC. While both Meritor Transmission Corporation and ZF Meritor LCC have the word "Meritor" in their name, they are two different companies. I will refer to Meritor Transmission Corporation as "Meritor" and I will refer to ZF Meritor LLC as "ZFM." Because both of these companies brought this lawsuit, I will refer to them collectively as "Plaintiffs." The defendant in this case is Eaton Corporation, which I will refer to as "Eaton" or "Defendant."

Meritor, ZFM, and Eaton, at various times between 1989 and 2007, each manufactured and sold heavy duty truck transmissions to truck manufacturers in North America. There are

only four direct purchasers of heavy duty transmissions in North America, these companies are referred to as the Original Equipment Manufacturers ("OEMs"). The OEMs used heavy-duty transmissions, together with many other component parts including engines, axles, and brakes, to build trucks. During the time period most relevant to this case, there were four OEMs who bought nearly all of the heavy duty transmissions sold by Eaton, Meritor, and ZFM. The four OEMs are companies called Freightliner, Paccar, International, and Volvo/Mack.

Plaintiff Meritor first began selling transmissions in 1989 after it acquired the transmission business of another company called Rockwell. Meritor sold two types of manual transmissions for use in the manufacture of line-haul trucks. Line-haul trucks are trucks used for long distance routes that you may have heard of as either "tractor-trailers" or "eighteen-wheelers." Meritor competed with Eaton in selling these transmissions for line-haul trucks.

Plaintiff ZFM was a company formed in June 1999; it was a joint venture of two companies: Meritor and ZF AG, a German company. ZF AG must not be confused with ZFM. They are completely different companies. ZF AG is not a plaintiff in this case and has not made any claims for antitrust violations against Eaton. Meritor contributed its transmission business to ZFM and stopped selling transmissions when the joint venture was formed. ZFM sold updated versions of Meritor's two line-haul manual transmissions as well as an automated mechanical transmission developed by ZF and modified for the U.S market called the Freedomline. ZFM competed with Eaton in the sale of heavy duty transmissions between mid-1999 and the end of 2003 when it dissolved and exited the market.

Defendant Eaton has been in the business of designing, manufacturing, and selling heavy duty truck transmissions since at least the 1950s. Between at least 1989 and 2009, Eaton was the largest manufacturer and seller of all types of heavy duty truck transmissions in North America.

Some time between July 2000 and November 2002, Eaton entered into long-term supply agreements, sometimes referred to as "LTAs", with each of the four OEMs. These LTAs were of a longer duration than previous supply agreements and included provisions which required each of the OEMs to purchase a high percentage of their heavy duty truck transmissions from Eaton in order to obtain price concessions and/or rebate payments.

Plaintiffs brought this lawsuit against Eaton, alleging that Eaton had violated the antitrust laws by acquiring monopoly power in the North American market for heavy duty truck transmissions and used its monopoly power and LTAs to unlawfully foreclose ZFM from competing in a substantial portion of the transmission market. Plaintiffs further allege that Eaton's violations of the antitrust laws caused ZFM to lose sales and profits it would have earned in the absence of Eaton's conduct.

The First "Liability" Trial and the Jury's Findings

The trial of this case was split by the Court into two parts. The first part, which was called the "liability trial," took place before a different jury in the fall of 2009. I will refer to the jury in the first trial as the "liability trial jury." After hearing evidence concerning Plaintiffs' claims and Eaton's defenses to those claims, the liability trial jury decided in favor of Plaintiffs.

The liability trial jury found that:

1. Eaton unlawfully acquired or maintained monopoly power in the North American heavy duty truck transmission market by engaging in anticompetitive conduct, in violation of Section 2 of the Sherman Act;

2. Eaton entered into contract(s), combination or conspiracy with others that unreasonably restrained trade, in violation of Section 1 of the Sherman Act.

3. Eaton entered into contracts for the sale of heavy duty transmissions that constituted de facto exclusive dealing contracts; and Eaton entered into a significant number of de facto exclusive dealing contracts such that defendant's conduct substantially lessened competition or tended to create a monopoly in the North American heavy duty transmission market, in violation of Section 3 of the Clayton Act.

4. With respect to each of these violations, the harm to competition associated with Eaton's unlawful conduct outweighed any competitive benefits; and

5. Each of Eaton's violations caused Plaintiffs to suffer antitrust injury to their businesses or properties at some unidentified time after March 28, 2002.

The decisions of the liability trial jury, as expressed by the verdict in that part of the case, are conclusive and you may not reconsider them. For purposes of performing your duties you must accept those decisions as correct.

The liability trial jury, however, did not address whether Plaintiffs suffered any monetary damages as a result of Eaton's anticompetitive conduct or, if so, when such damages occurred or the amount of any such damages.

This Trial: The "Damages Trial"

This trial, for which you have been chosen to serve as jurors, is the second trial in this proceeding. I will refer to this trial as the "damages trial." But by referring to this as the "damages trial," I am not implying that Plaintiffs suffered monetary damages or that you must find monetary damages for Plaintiffs.

The purpose of this trial is to give Plaintiffs the opportunity to prove to you whether Eaton's anticompetitive conduct caused ZFM or Meritor monetary damages and, if so, the dollar amount of any such damages. The liability trial jury did not hear evidence, consider, or decide, whether Plaintiffs proved any monetary damages or, if so, the dollar amount of any such damages. Nor did they consider or decide when after March 28, 2002 any such damages may have occurred. It is thus up to you, as jurors, to determine when Eaton's conduct caused Plaintiffs injury, whether such injury resulted in monetary damages, and if so, the amount of damages.

Damages: Burden of Proof

Now, I will give you some preliminary instructions to assist you in understanding the evidence that you are about to hear concerning the issue of damages.

In private antitrust actions, the burden is placed upon the plaintiff to show that the damage claimed was in fact caused by the unlawful acts of the defendant and did not result from some other factor, such as management problems, a recession in the economy or lawful competition by the defendant. To the extent that you find that any money was lost because of general conditions in the industry or other factors not attributable to Defendant's unlawful conduct, you should not include any such sums in your calculation of damages. Plaintiffs' burden here—on the issue of what caused the damages they are asserting—is to prove their claims by what is called a preponderance of the evidence. That means that they have to produce evidence which, when considered in light of all the facts, leads you to believe that what they claim is more likely than not true.

Plaintiffs also have the burden of proof to provide you with a reasonable estimate of their damages. You are not permitted to simply guess or speculate or pull figures out of the air. You have to have a rationale, and a reasonable basis for concluding that any damages figure you award is a reasonable estimate, and a fair estimate, of any loss sustained by the Plaintiffs.

Damages: Calculation of Lost Profits

Plaintiffs' damages claim is, in part, for profits ZFM claims it would have earned on additional sales of transmissions but-for Eaton's anticompetitive conduct. If you find that Eaton's anticompetitive conduct alone caused ZFM to have lost sales of transmissions and profits that they would have earned on these lost sales, you may award damages for such lost profits. To determine the amount of lost profits, you must base your calculation on Plaintiff's

proof of "net profits" they lost. Net profit is defined as the amount by which ZFM's gross revenues would have exceeded all of the costs and expenses that ZFM would have incurred to produce those revenues. If you find that plaintiffs have provided insufficient evidence to calculate net profits other than through speculation or guesswork, then you may not award damages for lost profits.

If there are two or more causes for any loss that Plaintiffs claim to have suffered, Plaintiffs have the sole burden of proving the actual portion of loss suffered as a result of the anticompetitive conduct as opposed to legal competitive activities, market forces in general, or actions taken by Plaintiffs themselves, such as poor business decisions, the failure to compete with other suppliers on price, product quality problems, or a lack of competitive products. If the amount of damages solely attributable to anticompetitive activity cannot be separated by you from the amount of harm caused by other factors except through guesswork or speculation, then you may not award any damages at all.

The Evidence and Your Duty as Jurors

It will be your duty to decide what the facts are, based solely on the evidence as presented at trial. You, and you alone, are the judges of the facts. You will have to apply those facts to the law as I will instruct you at the close of evidence. You must follow that law. However, nothing I say or do during the course of the trial is intended to indicate what your verdict should be.

The evidence from which you will find the facts will consist of the testimony of witnesses and documents and other things admitted into evidence. Some of the documents and testimony that were admitted as evidence in the liability trial will also be used as evidence during this damages trial. Evidence from the liability trial is entitled to the same consideration and is to be judged, insofar as possible, in the same way as evidence being admitted for the first time during this damages trial. In addition, the evidence may include certain facts as agreed to by the parties or as I instruct you.

In the course of the case, you may hear previously taken deposition testimony. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath and swears to tell the truth, and lawyers from each party may ask questions. A court reporter is present and records the questions and answers. Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify at trial.

As I have previously stated, you will also hear testimony taken from the first part of the case – the liability trial. That testimony was taken during the first trial, the witness was placed under oath and swore to tell the truth, and the lawyers from each party were able to ask questions. A court reporter was present and recorded the questions and answers. Testimony

from the liability trial is entitled to the same consideration, and is to be judged, insofar as possible, in the same way as if the witness had been present to testify in this trial.

In judging the facts, it will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness' testimony to accept or reject.

As previously mentioned, you will also hear from expert witnesses. When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field – that person is called an expert witness – is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it and how much weight to give that testimony.

Certain things are not evidence. Statements, arguments and questions by lawyers are not evidence. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe testimony or exhibits being offered into evidence are not admissible under the Rules of Evidence. You should not be influenced by a lawyer's objection or by my ruling on the objection. If I sustain or uphold the objection, and find the matter is not admissible, you should ignore the question and or other item of evidence. If I overrule an objection and allow the matter in evidence, you should consider the testimony or other item of evidence as you would any evidence. If I instruct you during the trial that some item of evidence is admitted for a limited purpose, you must follow that instruction and consider the evidence for that purpose only. I will instruct you further during the trial if this happens.

Conduct as Jurors

Now, a few words about your conduct as jurors. You should not reach any conclusions as to the issues presented until all the evidence is in and you have been given your final instructions. You may write questions down and give them to my courtroom deputy. She will give the questions to me and I will pass them along to the attorneys, who may or may not try to incorporate your questions into their examinations. You must only consider the evidence presented in the courtroom. Anything you see or hear outside the courtroom is not evidence and must be disregarded. Do not read or listen to anything touching on this case, the parties, or on the antitrust laws generally, that is not admitted into evidence, except as I allow. By that I mean, if there may be a newspaper or internet article or radio or television report relating to this case, or the parties, or the antitrust laws, do not read the article or watch or listen to the report. In addition, do not try to do any independent research or investigation on your own or speak to anyone other than as I specifically allow, on matters relating to this case, or the parties, or to the antitrust laws in general, including on the telephone, in person, on the internet or through social media. The proceedings during the trial will be transcribed by court reporters; however, it is not the practice of this Court to make the trial transcripts available to jurors. You must rely on your own recollection of what testimony was presented and how credible that testimony was. If you wish, you may take notes to help you remember what witnesses said. My courtroom deputy will arrange for pens, pencils and paper. If you do take notes, please keep them to yourself until the end of the trial when you and your fellow jurors go to the jury room to decide the case. Here are some other specific points to keep in mind about note-taking. First, note-taking is permitted, but it is not required. You are not required to take notes. How many notes you want to take, if any, is entirely up to you. Second, please make sure that note-taking does not distract you from your

tasks as jurors. You must listen to all the testimony of each witness. You also need to decide whether and how much to believe each witness. That will require you to watch the appearance, behavior, and manner of each witness while he or she is testifying. You cannot write down everything that is said, and there is always a fear that a juror will focus so much on note-taking that he or she will miss the opportunity to make important observations. Third, your notes are memory aids; they are not evidence. Notes are not a record or written transcript of the trial. Whether or not you take notes, you will need to rely on your own memory of what was said. Notes are only to assist your memory; you should not be overly influenced by notes.

Now – and this does not have to do with note-taking – please wear your juror identification tags every day so that the parties can avoid engaging you in conversation, thereby bringing your impartiality into question.

Course of the Trial

Once the trial has begun, the attorneys will have three opportunities to talk to you. The first opportunity is the opening statement. During the opening statements, the attorneys will introduce their respective stories to you. It will be up to you to determine whether the evidence – including the testimony of the witnesses and the admitted documents – supports what the lawyers say in their opening statements. The second opportunity that the lawyers have to talk to you is during transition statements. Lawyers are permitted to make transition statements whenever they call a witness to the stand, to introduce the witness and to briefly explain the relevance of the witness' anticipated testimony. Finally, after all the evidence is in, the lawyers will offer closing arguments to summarize and interpret the evidence for you and to tie the evidence to their story. I will then give you instructions on the law and describe for you the damages matters you must resolve. You will then retire to the jury room to deliberate on your verdict.

EXHIBIT B

ZF Meritor LLC and Meritor Transmission Corporation v. Eaton Corporation

Civ. No. 06-623-SLR

PRELIMINARY JURY INSTRUCTIONS – DAMAGES PHASE

Introduction

Members of the Jury:

Now that you have been sworn in, I have the following preliminary instructions for guidance on your role as jurors in this case.

This is a lawsuit arising under the federal antitrust laws known as the Sherman Act and the Clayton Act.[1] This is a civil case, not a criminal case. The civil antitrust laws regulate competition. Their purpose is to encourage and protect vigorous and open competition in the sale of products and services, among other things.[2] The antitrust laws rest on the central premise that competition produces the best allocation of our economic resources, the lowest prices, the highest quality, and the greatest material progress.[3]

This lawsuit was filed in 2006 by two separate companies—Meritor Transmission Corporation and ZF Meritor LLC.[4] While both Meritor Transmission Corporation and ZF Meritor LCC have the word "Meritor" in their name, they are two different companies.[5] I will

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[1] *See* Preliminary Jury Instructions from Liability Trial p. 3.

[2] *See* Final Jury Instructions from Liability Trial p. 16, edited slightly.

[3] *See* Plaintiffs' Proposed Jury Instructions p. 2, n. 9; Final Jury Instructions from Liability Trial p. 16

[4] *See ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 263-64 (3d Cir. 2012) ("This case arises from an antitrust action brought by ZF Meritor, LLC ("ZF Meritor") and Meritor Transmission Corporation ("Meritor") (collectively, "Plaintiffs") against Eaton Corporation ("Eaton") . . .").

[5] *See* Complaint ¶¶ 4-5(defining Meritor and ZF Meritor as separate entities); Final Jury Instructions from Liability Trial at 3 ("At times, I will refer to Meritor and the joint venture collectively as 'plaintiffs.' But you should understand that they are distinct companies with different operations.").

refer to Meritor Transmission Corporation as "Meritor" and I will refer to ZF Meritor LLC as "ZFM." Because both of these companies brought this lawsuit, I will refer to them collectively as "Plaintiffs." The defendant in this case is Eaton Corporation, which I will refer to as "Eaton" or "Defendant."

Meritor, ZFM, and Eaton, at various times between 1989 and 2007, each manufactured and sold heavy duty truck transmissions to truck manufacturers in North America.[6] There are only four direct purchasers of heavy duty transmissions in North America, these companies are referred to as the Original Equipment Manufacturers ("OEMs").[7] The OEMs used heavy-duty transmissions, together with many other component parts including engines, axles, and brakes, to build trucks.[8] During the time period most relevant to this case, there were four OEMs who bought nearly all of the heavy duty transmissions sold by Eaton, Meritor, and ZFM.[9] The four OEMs are companies called Freightliner, Paccar, International, and Volvo/Mack.[10]

Plaintiff Meritor first began selling transmissions in 1989 after it acquired the transmission business of another company called Rockwell.[11] Meritor sold two types of manual transmissions for use in the manufacture of line-haul trucks.[12] Line-haul trucks are trucks used

[6] *See* Preliminary Jury Instructions from Liability Trial p. 1; Final Jury Instructions from Liability Trial p. 3.

[7] *See ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 264 (3d Cir. 2012)

[8] *See* Final Jury Instructions from Liability Trial p. 3.

[9] *See* Complaint ¶ 27.

[10] *See ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 264 (3d Cir. 2012); *See* Complaint ¶ 27.

[11] *See* Complaint ¶ 35; *ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 264 (3d Cir. 2012).

[12] *See* Complaint ¶¶ 35-36; Order Denying JMOL, Dkt. No. 259, at 2.

for long distance routes that you may have heard of as either "tractor-trailers" or "eighteen-wheelers."[13] Meritor competed with Eaton in selling these transmissions for line-haul trucks.[14]

Plaintiff ZFM was a company formed in June 1999; it was a joint venture of two companies: Meritor and ZF AG, a German company.[15] ZF AG must not be confused with ZFM. They are completely different companies. ZF AG is not a plaintiff in this case and has not made any claims for antitrust violations against Eaton.[16] Meritor contributed its transmission business to ZFM and stopped selling transmissions when the joint venture was formed.[17] ZFM sold updated versions of Meritor's two line-haul manual transmissions as well as an automated mechanical transmission developed by ZF and modified for the U.S market called the Freedomline.[18] ZFM competed with Eaton in the sale of heavy duty transmissions between mid-1999 and the end of 2003 when it dissolved and exited the market.[19]

Defendant Eaton has been in the business of designing, manufacturing, and selling heavy duty truck transmissions since at least the 1950s.[20] Between at least 1989 and 2009, Eaton was the largest manufacturer and seller of all types of heavy duty truck transmissions in North America.[21]

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[13] *See* Complaint ¶ 20.

[14] *See* Complaint ¶ 21.

[15] *ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 264 (3d Cir. 2012).

[16] *See* Final Jury Instructions from Liability Trial at 3 (defining plaintiffs); *ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 264 n. 3 (3d Cir. 2012) ("ZF AG is not a party to this lawsuit.").

[17] *ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 264 (3d Cir. 2012)

[18] *Id.*

[19] *See* Final Jury Instructions from Liability Trial at 3.

[20] *ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 264 (3d Cir. 2012)

[21] *See* Complaint ¶ 17.

Some time between July 2000 and November 2002, Eaton entered into long-term supply agreements, sometimes referred to as "LTAs", with each of the four OEMs.[22] These LTAs were of a longer duration than previous supply agreements and included provisions which required each of the OEMs to purchase a high percentage of their heavy duty truck transmissions from Eaton in order to obtain price concessions and/or rebate payments.[23]

Plaintiffs brought this lawsuit against Eaton, alleging that Eaton had violated the antitrust laws by acquiring monopoly power in the North American market for heavy duty truck transmissions and used its monopoly power and LTAs to unlawfully foreclose ZFM from competing in a substantial portion of the transmission market.[24] Plaintiffs further allege that Eaton's violations of the antitrust laws caused ZFM to lose sales and profits it would have earned in the absence of Eaton's conduct.[25]

[22] See *ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 265 (3d Cir. 2012)

[23] *See* Order Denying JMOL, Dkt. No. 259, at 2-4.

[24] *See* Complaint ¶ 3.

[25] *See* Complaint ¶ 77; *ZF Meritor, LLC and Meritor Transmission Corp. v. Eaton Corp.*, 696 F.3d 254, 267 (3d Cir. 2012).

The First "Liability" Trial and the Jury's Findings

The trial of this case was split by the Court into two parts. The first part, which was called the "liability trial," took place before a different jury in the fall of 2009. I will refer to the jury in the first trial as the "liability trial jury." After hearing evidence concerning Plaintiffs' claims and Eaton's defenses to those claims, the liability trial jury decided in favor of Plaintiffs.[26]

The liability trial jury found that[27]:

1. Eaton unlawfully acquired or maintained monopoly power in the North American heavy duty truck transmission market by engaging in anticompetitive conduct, in violation of Section 2 of the Sherman Act;

2. Eaton entered into contract(s), combination or conspiracy with others that unreasonably restrained trade, in violation of Section 1 of the Sherman Act.

3. Eaton entered into contracts for the sale of heavy duty transmissions that constituted de facto exclusive dealing contracts; and Eaton entered into a significant number of de facto exclusive dealing contracts such that defendant's conduct substantially lessened competition or tended to create a monopoly in the North American heavy duty transmission market, in violation of Section 3 of the Clayton Act.

4. With respect to each of these violations, the harm to competition associated with Eaton's unlawful conduct outweighed any competitive benefits; and

5. Each of Eaton's violations caused Plaintiffs to suffer antitrust injury to their businesses or properties at some unidentified time after March 28, 2002.

[26] *See* Verdict Form from Liability Trial.

[27] *See* Verdict Form from Liability Trial (The following paragraphs 1-5 come from the Verdict Form from Liability Trial)

The decisions of the liability trial jury, as expressed by the verdict in that part of the case, are conclusive and you may not reconsider them. For purposes of performing your duties you must accept those decisions as correct.[28]

The liability trial jury, however, did not address whether Plaintiffs suffered any monetary damages as a result of Eaton's anticompetitive conduct or, if so, when such damages occurred or the amount of any such damages.[29]

[28] New

[29] *See* Verdict Form from Liability Trial.

This Trial: The "Damages Trial"[30]

This trial, for which you have been chosen to serve as jurors, is the second trial in this proceeding. I will refer to this trial as the "damages trial." But by referring to this as the "damages trial," I am not implying that Plaintiffs suffered monetary damages or that you must find monetary damages for Plaintiffs.

The purpose of this trial is to give Plaintiffs the opportunity to prove to you whether Eaton's anticompetitive conduct caused ZFM or Meritor monetary damages and, if so, the dollar amount of any such damages. The liability trial jury did not hear evidence, consider, or decide, whether Plaintiffs proved any monetary damages or, if so, the dollar amount of any such damages. Nor did they consider or decide when after March 28, 2002 any such damages may have occurred. It is thus up to you, as jurors, to determine when Eaton's conduct caused Plaintiffs injury, whether such injury resulted in monetary damages, and if so, the amount of damages.

[30] New

Damages: Burden of Proof

Now, I will give you some preliminary instructions to assist you in understanding the evidence that you are about to hear concerning the issue of damages.

In private antitrust actions, the burden is placed upon the plaintiff to show that the damage claimed was in fact caused by the unlawful acts of the defendant and did not result from some other factor, such as management problems, a recession in the economy or lawful competition by the defendant.[31] To the extent that you find that any money was lost because of general conditions in the industry or other factors not attributable to Defendant's unlawful conduct, you should not include any such sums in your calculation of damages.[32] Plaintiffs' burden here—on the issue of what caused the damages they are asserting—is to prove their claims by what is called a preponderance of the evidence.[33] That means that they have to produce evidence which, when considered in light of all the facts, leads you to believe that what they claim is more likely than not true.[34]

Plaintiffs also have the burden of proof to provide you with a reasonable estimate of their damages.[35] You are not permitted to simply guess or speculate or pull figures out of the air.[36] You have to have a rationale, and a reasonable basis for concluding that any damages figure you award is a reasonable estimate, and a fair estimate, of any loss sustained by the Plaintiffs.[37]

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[31] *See R.S.E. v. Pennsy Supply, Inc.*, 523 F.Supp. 954, 965 (M.D. Pa. 1981).

[32] *See In re Lower Lake Erie Iron Ore Antitrust Litigation*, 998 F.2d 1144, 1176 (3d Cir. 1993).

[33] *See* Preliminary Jury Instructions from Liability Trial p. 2, edited slightly.

[34] *Id.*

[35] *See Lower Lake Erie*, 998 F.2d at 1176.

[36] *Id.*

[37] *Id.*

Damages: Calculation of Lost Profits

Plaintiffs' damages claim is, in part, for profits ZFM claims it would have earned on additional sales of transmissions but-for Eaton's anticompetitive conduct.[38] If you find that Eaton's anticompetitive conduct alone caused ZFM to have lost sales of transmissions and profits that they would have earned on these lost sales, you may award damages for such lost profits.[39] To determine the amount of lost profits, you must base your calculation on Plaintiff's proof of "net profits" they lost.[40] Net profit is defined as the amount by which ZFM's gross revenues would have exceeded all of the costs and expenses that ZFM would have incurred to produce those revenues.[41] If you find that plaintiffs have provided insufficient evidence to calculate net profits other than through speculation or guesswork, then you may not award damages for lost profits.[42]

If there are two or more causes for any loss that Plaintiffs claim to have suffered, Plaintiffs have the sole burden of proving the actual portion of loss suffered as a result of the anticompetitive conduct as opposed to legal competitive activities, market forces in general, or actions taken by Plaintiffs themselves, such as poor business decisions, the failure to compete with other suppliers on price, product quality problems, or a lack of competitive products.[43] If the amount of damages solely attributable to anticompetitive activity cannot be separated by you

[38] *See* Complaint ¶77.

[39] *See* ABA Model Antitrust Damages Jury Instruction 8: Damages for Competitors – Lost Profits (2005).

[40] *See, e.g.*, *Eastman Kodak Co. v. S. Photo Materials Co.*, 273 U.S. 359, 379 (1927); *Tunis Bros. Co., Inc. v. Ford Motor Co.*, 952 F.2d 715, 735-36 (3d Cir. 1991) (appropriate measure of damages for future lost profits is net profits, not gross); *Deaktor v. Fox Grocery Co.*, 475 F.2d 1112, 1116 (3d Cir. 1973) (same); *Wolfe v. Nat'l Lead Co.*, 225 F.2d 427, 431 (9th Cir. 1955) (gross profits not a proper measure of plaintiff's loss).

[41] *See* ABA Model Antitrust Damages Jury Instruction 8: Damages for Competitors – Lost Profits (2005).

[42] *Id.*

[43] *See* ABA Model Antitrust Damages Jury Instruction 4: Causation and Disaggregation (2005), edited slightly.

from the amount of harm caused by other factors except through guesswork or speculation, then you may not award any damages at all.[44]

[44] *Id.*

The Evidence and Your Duty as Jurors

It will be your duty to decide what the facts are, based solely on the evidence as presented at trial. You, and you alone, are the judges of the facts. You will have to apply those facts to the law as I will instruct you at the close of evidence. You must follow that law. However, nothing I say or do during the course of the trial is intended to indicate what your verdict should be.[45]

The evidence from which you will find the facts will consist of the testimony of witnesses and documents and other things admitted into evidence.[46] Some of the documents and testimony that were admitted as evidence in the liability trial will also be used as evidence during this damages trial.[47] Evidence from the liability trial is entitled to the same consideration and is to be judged, insofar as possible, in the same way as evidence being admitted for the first time during this damages trial.[48] In addition, the evidence may include certain facts as agreed to by the parties or as I instruct you.[49]

In the course of the case, you may hear previously taken deposition testimony.[50] A deposition is the sworn testimony of a witness taken before trial.[51] The witness is placed under oath and swears to tell the truth, and lawyers from each party may ask questions.[52] A court reporter is present and records the questions and answers.[53] Deposition testimony is entitled to

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[45] *See* Preliminary Jury Instructions from Liability Trial p. 4.

[46] *Id.*

[47] *See* Plaintiffs' Proposed Jury Instructions p. 5

[48] *See* Plaintiffs' Proposed Jury Instructions p. 5 (modeled off of language re: deposition testimony from Preliminary Jury Instructions from Liability Trial p. 4).

[49] *See* Preliminary Jury Instructions from Liability Trial p. 4.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify at trial.[54]

As I have previously stated, you will also hear testimony taken from the first part of the case – the liability trial. That testimony was taken during the first trial, the witness was placed under oath and swore to tell the truth, and the lawyers from each party were able to ask questions. A court reporter was present and recorded the questions and answers. Testimony from the liability trial is entitled to the same consideration, and is to be judged, insofar as possible, in the same way as if the witness had been present to testify in this trial.[55]

In judging the facts, it will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness' testimony to accept or reject.[56]

As previously mentioned, you will also hear from expert witnesses. When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field – that person is called an expert witness – is permitted to state his or her opinion on those technical matters.[57] However, you are not required to accept that opinion.[58] As with any other witness, it is up to you to decide whether to rely upon it and how much weight to give that testimony.[59]

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[54] *Id.*

[55] *See* Plaintiffs' Proposed Jury Instructions p. 6 (modeled off of language re: deposition testimony from Preliminary Jury Instructions from Liability Trial p. 4).

[56] *See* Preliminary Jury Instructions from Liability Trial p. 5.

[57] *See* Preliminary Jury Instructions from Liability Trial p. 4.

[58] *Id.*

[59] *Id.*

Certain things are not evidence.[60] Statements, arguments and questions by lawyers are not evidence.[61] Objections to questions are not evidence.[62] Lawyers have an obligation to their clients to make an objection when they believe testimony or exhibits being offered into evidence are not admissible under the Rules of Evidence.[63] You should not be influenced by a lawyer's objection or by my ruling on the objection.[64] If I sustain or uphold the objection, and find the matter is not admissible, you should ignore the question and or other item of evidence.[65] If I overrule an objection and allow the matter in evidence, you should consider the testimony or other item of evidence as you would any evidence.[66] If I instruct you during the trial that some item of evidence is admitted for a limited purpose, you must follow that instruction and consider the evidence for that purpose only.[67] I will instruct you further during the trial if this happens.[68]

[60] *See* Preliminary Jury Instructions from Liability Trial p. 4-5.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

Conduct as Jurors[69]

Now, a few words about your conduct as jurors. You should not reach any conclusions as to the issues presented until all the evidence is in and you have been given your final instructions. You may write questions down and give them to my courtroom deputy. She will give the questions to me and I will pass them along to the attorneys, who may or may not try to incorporate your questions into their examinations. You must only consider the evidence presented in the courtroom. Anything you see or hear outside the courtroom is not evidence and must be disregarded. Do not read or listen to anything touching on this case, the parties, or on the antitrust laws generally, that is not admitted into evidence, except as I allow. By that I mean, if there may be a newspaper or internet article or radio or television report relating to this case, or the parties, or the antitrust laws, do not read the article or watch or listen to the report. In addition, do not try to do any independent research or investigation on your own or speak to anyone other than as I specifically allow, on matters relating to this case, or the parties, or to the antitrust laws in general, including on the telephone, in person, on the internet or through social media. The proceedings during the trial will be transcribed by court reporters; however, it is not the practice of this Court to make the trial transcripts available to jurors. You must rely on your own recollection of what testimony was presented and how credible that testimony was. If you wish, you may take notes to help you remember what witnesses said. My courtroom deputy will arrange for pens, pencils and paper. If you do take notes, please keep them to yourself until the end of the trial when you and your fellow jurors go to the jury room to decide the case. Here are some other specific points to keep in mind about note-taking. First, note-taking is permitted, but it is not required. You are not required to take notes. How many notes you want to take, if any,

[69] Plaintiffs' Proposed Jury Instructions p. 7-8 (Everything under "Conduct as Jurors" section reflects Plaintiffs' Proposed Jury Instructions as edited from Preliminary Jury Instructions from Liability Trial).

is entirely up to you. Second, please make sure that note-taking does not distract you from your tasks as jurors. You must listen to all the testimony of each witness. You also need to decide whether and how much to believe each witness. That will require you to watch the appearance, behavior, and manner of each witness while he or she is testifying. You cannot write down everything that is said, and there is always a fear that a juror will focus so much on note-taking that he or she will miss the opportunity to make important observations. Third, your notes are memory aids; they are not evidence. Notes are not a record or written transcript of the trial. Whether or not you take notes, you will need to rely on your own memory of what was said. Notes are only to assist your memory; you should not be overly influenced by notes.

Now – and this does not have to do with note-taking – please wear your juror identification tags every day so that the parties can avoid engaging you in conversation, thereby bringing your impartiality into question.

Course of the Trial[70]

Once the trial has begun, the attorneys will have three opportunities to talk to you. The first opportunity is the opening statement. During the opening statements, the attorneys will introduce their respective stories to you. It will be up to you to determine whether the evidence – including the testimony of the witnesses and the admitted documents – supports what the lawyers say in their opening statements. The second opportunity that the lawyers have to talk to you is during transition statements. Lawyers are permitted to make transition statements whenever they call a witness to the stand, to introduce the witness and to briefly explain the relevance of the witness' anticipated testimony. Finally, after all the evidence is in, the lawyers will offer closing arguments to summarize and interpret the evidence for you and to tie the evidence to their story. I will then give you instructions on the law and describe for you the damages matters you must resolve. You will then retire to the jury room to deliberate on your verdict.

[70] *See* Preliminary Jury Instructions from Liability Trial p. 7.

EXHIBIT C

ZF Meritor LLC and Meritor Transmission Corporation v. Eaton Corporation

Civ. No. 06-623-SLR

PRELIMINARY JURY INSTRUCTIONS – DAMAGES PHASE

~~**JURY INSTRUCTION NO. 1**~~

~~**INTRODUCTION**~~**Introduction**

Members of the Jury:

Now that you have been sworn in, I have the following preliminary instructions for guidance on your role as jurors in this case.

This is a lawsuit arising under the federal antitrust laws known as the Sherman Act and the Clayton Act. ~~**The**~~**This is a civil case, not a criminal case. The civil antitrust laws regulate competition. Their purpose is to encourage and protect vigorous and open competition in the sale of products and services, among other things. The antitrust laws rest on the central premise that competition produces the best allocation of our economic resources, the lowest prices, the highest quality, and the greatest material progress.**

This lawsuit was filed in 2006 by two ~~**related**~~**separate** companies~~**— ZF Meritor LLC and —**~~Meritor Transmission Corporation**and ZF Meritor LLC. While both Meritor Transmission Corporation and ZF Meritor LCC have the word "Meritor" in their name, they are two different companies**. I will refer to ~~**both of them**~~**Meritor Transmission Corporation** as "Meritor~~**." Meritor is the Plaintiff in**~~**" and I will refer to ZF Meritor LLC as "ZFM." Because both of these companies brought** this lawsuit~~**. Meritor sued the Defendant company named**~~**, I will refer to them collectively as "Plaintiffs." The defendant in this case is** Eaton Corporation, which I will refer to as "Eaton**" or "Defendant**."

Meritor**, ZFM,** and Eaton**, at various times between 1989 and 2007, each** manufactured and sold heavy duty truck transmissions **to truck manufacturers** in North America. ~~**Prior to Meritor entering the market, Eaton was and remained at all applicable times the only major supplier of heavy duty truck transmissions in North America. These heavy duty transmissions are purchased by four truck manufacturers that will be referred to throughout trial as "OEMs" (which stands for "Original Equipment Manufacturers"). The four OEMs are the only**~~**There are only four** direct purchasers of heavy duty ~~**truck transmissions, with the ultimate consumers being the truck buyers.**~~**transmissions in North America, these companies are referred to as the Original Equipment Manufacturers ("OEMs"). The OEMs used heavy-duty transmissions, together with many other component parts including engines, axles, and brakes, to build trucks. During the time period most relevant to this case, there were four OEMs who bought nearly all of the heavy duty transmissions sold by Eaton, Meritor, and ZFM. The four OEMs are companies called Freightliner, Paccar, International, and Volvo/Mack.**

Plaintiff Meritor first began selling transmissions in 1989 after it acquired the transmission business of another company called Rockwell. Meritor sold two types of manual transmissions for use in the manufacture of line-haul trucks. Line-haul trucks are trucks used for long distance routes that you may have heard of as either "tractor-trailers" or "eighteen-wheelers." Meritor competed with Eaton in selling these transmissions for line-haul trucks.

Plaintiff ZFM was a company formed in June 1999; it was a joint venture of two companies: Meritor and ZF AG, a German company. ZF AG must not be confused with ZFM. They are completely different companies. ZF AG is not a plaintiff in this case and

has not made any claims for antitrust violations against Eaton. Meritor contributed its transmission business to ZFM and stopped selling transmissions when the joint venture was formed. ZFM sold updated versions of Meritor's two line-haul manual transmissions as well as an automated mechanical transmission developed by ZF and modified for the U.S market called the Freedomline. ZFM competed with Eaton in the sale of heavy duty transmissions between mid-1999 and the end of 2003 when it dissolved and exited the market.

Defendant Eaton has been in the business of designing, manufacturing, and selling heavy duty truck transmissions since at least the 1950s. Between at least 1989 and 2009, Eaton was the largest manufacturer and seller of all types of heavy duty truck transmissions in North America.

Some time between July 2000 and November 2002, Eaton entered into long-term **supply** agreements ~~**or contracts, called**~~**, sometimes referred to as** "LTAs**"**~~**,"**~~ with each of the **four** OEMs. These LTAs were of ~~**an extended**~~**a longer** duration~~**, and contained**~~ **than previous supply agreements and included** provisions ~~**such as high market share commitments,**~~ which required each of the OEMs to purchase ~~**nearly all of its**~~**a high percentage of their** heavy duty truck transmissions from Eaton in order to obtain ~~**rebates and avoid risk of contract cancellation. The LTAs also contained requirements that Eaton's transmissions be published as the standard/preferred supplier, and in some cases the exclusive offering, in the OEM's product catalogs, called databooks.**~~**price concessions and/or rebate payments.**

~~**Meritor**~~**Plaintiffs** brought this lawsuit against Eaton, alleging that ~~**it**~~**Eaton** had violated ~~**three antitrust laws. The purpose of**~~ the antitrust laws ~~**is to preserve free and unfettered competition in the marketplace. The antitrust laws rest on the central premise**~~

~~**that competition produces the best allocation of our economic resources, the lowest prices, the highest quality, and the greatest material progress. In bringing this lawsuit, Meritor alleged that Eaton had**~~**by acquiring** monopoly power in the North American market for heavy duty truck transmissions and ~~**that Eaton**~~ used ~~**that power, through its LTAs with the OEMs and other conduct, to prevent Meritor from competing for business, causing injury to Meritor. Meritor also asserted that Eaton, individually and also in concert with the OEMs, engaged in anticompetitive conduct to acquire and maintain monopoly power in the market and to impede competition.**~~**its monopoly power and LTAs to unlawfully foreclose ZFM from competing in a substantial portion of the transmission market. Plaintiffs further allege that Eaton's violations of the antitrust laws caused ZFM to lose sales and profits it would have earned in the absence of Eaton's conduct.**

The First "Liability" Trial and the Jury's Findings

The trial of this case ~~has been~~was split by the Court into two parts~~, with~~. The first part, which was called the "liability trial," took place before a different jury ~~for each part. This is the second part – the damages phase. After~~in the fall of 2009. I will refer to the jury in the first trial ~~(~~as the "liability ~~phase), the first~~trial jury." After hearing evidence concerning Plaintiffs' claims and Eaton's defenses to those claims, the liability trial jury decided in favor of ~~Meritor. It found that the relevant market was heavy duty truck transmissions in North America, and that Eaton had monopoly power in that market. It further found that Eaton broke three antitrust laws, and that each of Eaton's violations of law caused Meritor injuries. Specifically, the first jury found that:~~Plaintiffs.

The liability trial jury found that:

~~–~~1. Eaton ~~willfully~~unlawfully acquired ~~and~~or maintained monopoly power in the ~~relevant~~North American heavy duty truck transmission market by engaging in anticompetitive ~~acts or practices~~conduct, in violation of Section 2 of the Sherman Act~~. Anticompetitive acts are acts, other than competition on the merits, which have the effect of preventing or excluding competition or frustrating the efforts of other companies to compete for customers within the relevant market. The first jury also found that:~~:

~~–~~2. Eaton~~'~~ entered into contract(s ~~contracts (the LTAs) with the OEMs and other conduct~~), combination or conspiracy with others that unreasonably restrained trade ~~or foreclosed competition in a substantial portion of the relevant market~~, in violation of Section 1 of the Sherman Act~~; and that~~.

~~–~~3. Eaton~~'s~~ entered into contracts ~~with the OEMs~~for the sale of heavy duty transmissions that constituted de facto exclusive dealing contracts~~,~~; and Eaton entered into

a ~~sufficient~~significant number of ~~such~~de facto exclusive dealing contracts ~~so as to~~such that defendant's conduct substantially ~~lessen~~lessened competition or ~~tend~~tended to create a monopoly in the North American heavy duty ~~truck transmissions~~transmission market ~~in North America~~, in violation of Section 3 of the Clayton Act.

~~The first jury also found that, with~~4. With respect to each of these violations ~~of law~~, the ~~competitive harms~~harm to competition associated with Eaton's unlawful conduct outweighed any competitive benefits ~~articulated by Eaton~~; and

5. ~~And that jury found that each~~ Each of Eaton's violations caused ~~Meritor~~Plaintiffs to suffer antitrust ~~injuries to its business or property since~~injury to their businesses or properties at some unidentified time after March 28, 2002.

~~These findings are conclusive. They are binding on this jury. You are not to reconsider them. The verdict form from the liability phase trial, and well as the instructions I gave that jury for completing that form, are part of the record in the damages phase trial. They will be available to you during your deliberations at the close of evidence.~~

~~Your job as the damages phase jury is to enforce the antitrust laws, in light of the verdict from the liability phase. In this case, you have one thing to decide and one thing only, according to these instructions and the instructions that I will give you at the end of the trial. You must decide the dollar amount of damages which Meritor suffered as a result of Eaton's illegal conduct.~~

~~JURY INSTRUCTION NO. 2~~

The decisions of the liability trial jury, as expressed by the verdict in that part of the case, are conclusive and you may not reconsider them. For purposes of performing your duties you must accept those decisions as correct.

The liability trial jury, however, did not address whether Plaintiffs suffered any monetary damages as a result of Eaton's anticompetitive conduct or, if so, when such damages occurred or the amount of any such damages.

This Trial: The "Damages Trial"

This trial, for which you have been chosen to serve as jurors, is the second trial in this proceeding. I will refer to this trial as the "damages trial." But by referring to this as the "damages trial," I am not implying that Plaintiffs suffered monetary damages or that you must find monetary damages for Plaintiffs.

The purpose of this trial is to give Plaintiffs the opportunity to prove to you whether Eaton's anticompetitive conduct caused ZFM or Meritor monetary damages and, if so, the dollar amount of any such damages. The liability trial jury did not hear evidence, consider, or decide, whether Plaintiffs proved any monetary damages or, if so, the dollar amount of any such damages. Nor did they consider or decide when after March 28, 2002 any such damages may have occurred. It is thus up to you, as jurors, to determine when Eaton's conduct caused Plaintiffs injury, whether such injury resulted in monetary damages, and if so, the amount of damages.

Damages: Burden of Proof

Now, I will give you some preliminary instructions to assist you in understanding the evidence that you are about to hear concerning the issue of damages.

In private antitrust actions, the burden is placed upon the plaintiff to show that the damage claimed was in fact caused by the unlawful acts of the defendant and did not result from some other factor, such as management problems, a recession in the economy or lawful competition by the defendant. To the extent that you find that any money was lost because of general conditions in the industry or other factors not attributable to Defendant's unlawful conduct, you should not include any such sums in your calculation of damages. Plaintiffs' burden here—on the issue of what caused the damages they are asserting—is to prove their claims by what is called a preponderance of the evidence. That means that they have to produce evidence which, when considered in light of all the facts, leads you to believe that what they claim is more likely than not true.

Plaintiffs also have the burden of proof to provide you with a reasonable estimate of their damages. You are not permitted to simply guess or speculate or pull figures out of the air. You have to have a rationale, and a reasonable basis for concluding that any damages figure you award is a reasonable estimate, and a fair estimate, of any loss sustained by the Plaintiffs.

~~**DUTY OF JURY**~~

Damages: Calculation of Lost Profits

Plaintiffs' damages claim is, in part, for profits ZFM claims it would have earned on additional sales of transmissions but-for Eaton's anticompetitive conduct. If you find that Eaton's anticompetitive conduct alone caused ZFM to have lost sales of transmissions and profits that they would have earned on these lost sales, you may award damages for such

lost profits. To determine the amount of lost profits, you must base your calculation on Plaintiff's proof of "net profits" they lost. Net profit is defined as the amount by which ZFM's gross revenues would have exceeded all of the costs and expenses that ZFM would have incurred to produce those revenues. If you find that plaintiffs have provided insufficient evidence to calculate net profits other than through speculation or guesswork, then you may not award damages for lost profits.

If there are two or more causes for any loss that Plaintiffs claim to have suffered, Plaintiffs have the sole burden of proving the actual portion of loss suffered as a result of the anticompetitive conduct as opposed to legal competitive activities, market forces in general, or actions taken by Plaintiffs themselves, such as poor business decisions, the failure to compete with other suppliers on price, product quality problems, or a lack of competitive products. If the amount of damages solely attributable to anticompetitive activity cannot be separated by you from the amount of harm caused by other factors except through guesswork or speculation, then you may not award any damages at all.

The Evidence and Your Duty as Jurors

It will be your duty to decide what the facts are, based solely on the evidence as presented at trial. You, and you alone, are the judges of the facts. You will have to apply those facts to the law as I will instruct you at the close of evidence. You must follow that law ~~whether you agree with it or not.~~

. However, nothing ~~You are the judges of the facts. I will decide which rules of law apply to this case. Nothing~~ I say or do during the course of the trial is intended to indicate what your verdict should be.

~~With respect to the evidence, the~~**The** evidence from which you will find the facts will consist of the testimony of witnesses and documents and other things admitted into evidence. Some of the documents and testimony that were admitted as evidence in the liability ~~phase~~ trial will also be used as evidence during this damages ~~phase~~ trial. Evidence from the liability ~~phase~~ trial is entitled to the same consideration and is to be judged, insofar as possible, in the same way as evidence being admitted for the first time during this damages ~~phase~~ trial. In addition, the evidence may include certain facts as agreed to by the parties or as I instruct you.

In the course of the case, you may hear previously taken deposition testimony. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath and swears to tell the truth, and lawyers from each party may ask questions. A court reporter is present and records the questions and answers. Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify at trial.

~~You~~**As I have previously stated, you** will also hear testimony taken from the first part of the case – the liability ~~phase~~**trial**. That testimony was taken during the first trial, the witness was placed under oath and swore to tell the truth, and the lawyers from each party were able to ask questions. A court reporter was present and recorded the questions and answers. Testimony from the liability ~~phase~~ trial is entitled to the same consideration, and is to be judged, insofar as possible, in the same way as if the witness had been present to testify in this trial.

In judging the facts, it will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness' testimony to accept or reject.

~~In the course of the trial~~**As previously mentioned**, you will also hear from expert witnesses. When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field – that person is called an expert witness ~~-~~ – is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it and how much weight to give that testimony.

~~**Another point on evidence: Because pre-trial fact discovery in this case basically ended in early 2009, and in light of other legal reasons, you may not see or hear much or any evidence about events over the last few years. This is a matter of legal procedure, and you are to draw no inference, positive or negative, about any such matters not included in the evidence.**~~

Certain things are not evidence. Statements, arguments and questions by lawyers are not evidence. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe testimony or exhibits being offered into evidence are not admissible under the Rules of Evidence. You should not be influenced by a ~~lawyer's~~**lawyer's**

objection or by my ruling on the objection. If I sustain or uphold the objection, and find the matter is not admissible, you should ignore the question **and** or other item of evidence. If I overrule an objection and allow the matter in evidence, you should consider the testimony or other item of evidence as you would any evidence. If I instruct you during the trial that some item of evidence is admitted for a limited purpose, you must follow that instruction and consider the evidence for that purpose only. I will instruct you further during the trial if this happens.

Conduct as Jurors

Now, a few words about your conduct as jurors. You should not reach any conclusions as to the issues presented until all the evidence is in and you have been given your final instructions. You may write questions down and give them to my courtroom deputy. She will give the questions to me and I will pass them along to the attorneys, who may or may not try to incorporate your questions into their examinations.

You ~~**Finally, you**~~ must only consider the evidence presented in the courtroom. Anything you see or hear outside the courtroom is not evidence and must be disregarded. ~~**You are to decide this case solely on the evidence presented here in the courtroom.**~~ Do not read or listen to anything touching on this case**, the parties**, or on the antitrust laws generally, that is not admitted into evidence, except as I allow. By that I mean, if there may be a newspaper or internet article or radio or television report relating to this case**, or the parties,** or the antitrust laws, do not read the article or watch or listen to the report. In addition, do not try to do any independent research or investigation on your own~~,~~ or speak to anyone other than as I specifically allow, on matters relating to this case**, or the parties,** or to the antitrust laws in general, including on the telephone, in person, on the internet or through social media. The proceedings during the trial will be transcribed by court reporters; however, it is not the practice of this Court to make the trial transcripts available to jurors. You must rely on your own recollection of what testimony was presented and how credible that testimony was. If you wish, you may take notes to help you remember what witnesses said. My courtroom deputy will arrange for pens, pencils and paper. If you do take notes, please keep them to yourself until the end of the trial when you and your fellow jurors go to the jury room to decide the case. Here are some other specific points to keep in mind about note-taking. First, note-taking is permitted, but

it is not required. You are not required to take notes. How many notes you want to take, if any, is entirely up to you. Second, please make sure that note-taking does not distract you from your tasks as jurors. You must listen to all the testimony of each witness. You also need to decide whether and how much to believe each witness. That will require you to watch the appearance, behavior, and manner of each witness while he or she is testifying. You cannot write down everything that is said, and there is always a fear that a juror will focus so much on note-taking that he or she will miss the opportunity to make important observations. Third, your notes are memory aids; they are not evidence. Notes are not a record or written transcript of the trial. Whether or not you take notes, you will need to rely on your own memory of what was said. Notes are only to assist your memory; you should not be overly influenced by notes.

Now – and this does not have to do with note-taking – please wear your juror identification tags every day so that the parties can avoid engaging you in conversation, thereby bringing your impartiality into question.

Course of the Trial

Once the trial has begun, the attorneys will have three opportunities to talk to you. The first opportunity is the opening statement. During the opening statements, the attorneys will introduce their respective stories to you~~. As I've already instructed, what the lawyers say is not evidence, but, because evidence has already been admitted in the liability phase, the lawyers may show or tell you about evidence in their opening statements~~. It will be up to you to determine whether the evidence – including the testimony of the witnesses and the admitted documents – supports what the lawyers say in their opening statements. The second opportunity that the lawyers have to talk to you is during transition statements. Lawyers are permitted to make transition statements whenever they call a witness to the stand, to introduce the witness and to briefly explain the relevance of the witness~~'~~’ anticipated testimony. Finally, after all the evidence is in, the lawyers will offer closing arguments to summarize and interpret the evidence for you and to tie the evidence to their story. I will then give you instructions on the law and describe for you the damages matters you must resolve. You will then retire to the jury room to deliberate on your verdict.

Summary report: **Litéra® Change-Pro TDC 7.5.0.90 Document comparison done on 6/3/2014 4:53:33 PM**	
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Intelligent Table Comparison: Active	
Original filename: Plaintiffs' Proposed Preliminary Jury Instructions without Annotations.doc	
Modified filename: Eaton Proposed Prelim Jury Instructions (Without Annotations).doc	
Changes:	
Add	103
~~**Delete**~~	85
~~*Move From*~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	188

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ZF MERITOR LLC and MERITOR TRANSMISSION CORPORATION, Plaintiffs, v. EATON CORPORATION, Defendant.	)	Civ. No. 06-623-SLR

VERDICT SHEET

Dated: October 7, 2009

We, the jury, unanimously find as follows:

I. Relevant Market

1. Did plaintiffs prove, by a preponderance of the evidence, that the relevant geographic market is North America?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

If your answer is "Yes," proceed to Question 2.
If your answer is "No," do not consider any additional questions. Please sign this verdict sheet and inform the court security officer that you have reached a verdict.

II. Plaintiffs' Section I Unreasonable Restraint of Trade Claim

2. Did plaintiffs prove, by a preponderance of the evidence, the existence of a contract(s), combination or conspiracy between defendant and others that unreasonably restrained trade?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

If your answer is "Yes," proceed to Question 3.
If your answer is "No," proceed to Question 5 .

3. Did plaintiffs prove, by a preponderance of the evidence, that the competitive harms associated with the unreasonable restraint of trade outweigh any competitive benefits proven by defendant?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

If your answer is "Yes," proceed to Question 4.
If your answer is "No," proceed to Question 5.

4. Did plaintiffs prove, by a preponderance of the evidence, that defendant's unreasonable restraint of trade caused plaintiffs to suffer antitrust injuries to their business or property at any time since March 28, 2002?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

Proceed to Question 5.

III. Plaintiffs' Section 2 Monopolization Claim

5. Did plaintiffs prove, by a preponderance of the evidence, that defendant unlawfully acquired or maintained monopoly power in the relevant market identified in Question 1, by engaging in anticompetitive conduct?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

prevented competition
excluded competition
monopolist - unlawful
when it involves anti-
competitive acts

If your answer is "Yes," proceed to Question 6 .
If your answer is "No," proceed to Question 8 .

6. Did plaintiffs prove, by a preponderance of the evidence, that the competitive harms associated with defendant's monopoly power (as per Question 5) outweigh the competitive benefits proven by defendant?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

If your answer is "Yes," proceed to Question 7 .
If your answer is "No," proceed to Question 8.

7. Did plaintiffs prove, by a preponderance of the evidence, that defendant's unlawful acquisition or maintenance of monopoly power caused plaintiffs to suffer antitrust injuries to their business or property at any time since March 28, 2002?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

If your answer is "Yes," proceed to Question 11.
If your answer is "No," proceed to Question 8.

IV. Plaintiffs' Section 2 Attempt to Monopolize Claim

8. Did plaintiffs prove, by a preponderance of the evidence, that defendant engaged in anticompetitive conduct with a specific intent to monopolize the relevant market identified in Question 1?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes _____ No _____

If your answer is "Yes," proceed to Question 9.
If your answer is "No," proceed to Question 11.

9. Did plaintiffs prove, by a preponderance of the evidence, that there was a dangerous probability that defendant would achieve its goal of monopolizing the relevant market identified in Question 1?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes _____ No _____

If your answer is "Yes," proceed to Question 10.
If your answer is "No," proceed to Question 11.

10. Did plaintiffs prove, by a preponderance of the evidence, that defendant's attempt to monopolize the relevant market identified in Question 1 caused plaintiffs to suffer antitrust injuries to their business or property at any time since March 28, 2002?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes _____ No _____

Proceed to Question 11.

V. Plaintiffs' Clayton Act Section 3 Claim

11. Did plaintiffs prove, by a preponderance of the evidence, that defendant entered into contracts for the sale of heavy duty transmissions that constituted de facto exclusive dealing contracts?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

If your answer is "Yes," proceed to Question 12.
If your answer is "No," do not consider any additional questions. Please sign this verdict sheet and inform the court security officer that you have reached a verdict.

12. Did plaintiffs prove, by a preponderance of the evidence, that defendant entered into a sufficient number of de facto exclusive dealing contracts such that defendant's conduct substantially lessened competition or tended to create a monopoly in the relevant market identified in Question1?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

If your answer is "Yes," proceed to Question 13.
If your answer is "No," do not consider any additional questions. Please sign this verdict sheet and inform the court security officer that you have reached a verdict.

13. Did plaintiffs prove, by a preponderance of the evidence, that the competitive harms associated with the de facto exclusive dealing contracts outweigh the competitive benefits proven by defendant?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

If your answer is "Yes," proceed to Question 14.
If your answer is "No," do not consider any additional questions. Please sign this verdict sheet and inform the court security officer that you have reached a verdict.

14. Did plaintiffs prove, by a preponderance of the evidence, that defendant's de facto exclusive dealing contracts caused plaintiffs to suffer antitrust injuries to their business or property at any time since March 28, 2002?

"Yes" is a finding for plaintiffs. "No" is a finding for defendant.

Yes ✓ No _____

Please sign this verdict sheet and inform the court security officer that you have reached a verdict.