



## COMPETITION COMMISSION OF INDIA

### Suo Motu Case No. 05 of 2017

#### *In Re: Cartelisation in Industrial and Automotive Bearings*

#### Against:

1. ABC Bearings Limited (now amalgamated with Timken India Limited)
2. National Engineering Industries Ltd.
3. Schaeffler India Ltd. (previously known as FAG Bearings India Ltd.)
4. SKF India Ltd.
5. Tata Steel Ltd., Bearing Division

#### CORAM

**Ashok Kumar Gupta**

**Chairperson**

**Sangeeta Verma**

**Member**

**Bhagwant Singh Bishnoi**

**Member**

#### Present:

For Timken India Ltd.

Mr. Karan S. Chandhiok, Ms. Lagna Panda and Mr. Salman Qureshi, Advocates

For National Engineering Industries Ltd. and Mr. Rohit Saboo and Mr. Sanjeev Taparia of National Engineering Industries Ltd.

Mr. Vaibhav Gaggar, Ms. Neha Mishra, Ms. Aayushi Sharma and Ms. Niti Richhariya, Advocates alongwith Mr. Bankatesh Kumar, Head-Legal of National Engineering Industries Ltd.

For Schaeffler India Ltd. and Mr. Rajiv Ghai of Schaeffler India Ltd.

Mr. Manas Kumar Chaudhuri, Mr. Sagardeep Rathi, Mr. Pranjal Prateek and Mr. Aman Singh Baroka, Advocates alongwith Ms. Preeti Shalukar, Legal Head of Schaeffler India Ltd. and Mr. Abhay Jhina, Compliance Officer of Schaeffler India Ltd.

For Mr. R.J. Anandpara of Schaeffler India Ltd.

None

For Mr. Ajay Kabu of Schaeffler India Ltd.

None

For Mr. Sarabjit Singh of Schaeffler India Ltd.

None



For SKF India Ltd.

Mr. Arun Kathpalia, Senior Advocate with Mr. Karan Mangain, Ms. Bani Brar, Mr. Ravisekhar Nair, Mr. Abhay Joshi, Ms. Krushika Nayan Chaudhry, Mr. Sahil Khanna and Ms. Ketki Agrawal, Advocates alongwith Ms. Reni Varghese, Senior Legal Counsel of SKF India Ltd. and Mr. Ranjan Kumar, Director (Legal) of SKF India Ltd.

For Mr. Rakesh Makhija and Mr. Shishir Joshipura of SKF India Ltd.

Ms. Archana Sahadeva, Advocate

For Mr. Lokesh Saxena of SKF India Ltd.

Mr. Saurabh S. Sinha and Ms. Chitra Y. Parande, Advocates

For Tata Steel Ltd., Bearing Division and Mr. Harsh Sachdev and Mr. Sanjiv Mohan of Tata Steel Ltd., Bearing Division

Dr. Abhishek Manu Singhvi, Senior Advocate and Mr. Sajjan Poovayya, Senior Advocate with Mr. Anand S. Pathak, Ms. Sreemoyee Deb, Mr. Avinash Anarnath, Mr. Shashank Goutam, Ms. Anubhuti Mishra, Mr. Param Tandon, Ms. Madhavi Khanna, Mr. Prati Bhanu, Ms. Raksha and Ms. Ashima Chauhan Singh, Advocates alongwith Mr. Harsh Sachdev, Former Executive In-charge, Bearing Division, Tata Bearing, Ms. Silpi Chattopadhyaya, Head Legal, Ms. Meena Lal, Chief Legal of Tata Steel Ltd. and Ms. Minakshi Agarwal, Senior Manager Legal of Tata Steel Ltd., Bearing Division

## **ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002**

### **Facts:**

1. The present case was initiated by the Commission *suo motu*, pursuant to receipt of an application dated 26.06.2017 under Section 46 of the Competition Act, 2002 (the 'Act') read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('LPR') filed on behalf of FAG Bearings India Ltd. (now, Schaeffler India Ltd.). ('Schaeffler'). In the said application, it was disclosed that Schaeffler, alongwith four other companies, *namely* ABC Bearings Limited (now amalgamated with Timken India Limited) ('Timken'), National Engineering Industries Ltd. ('NEI'), SKF India Ltd. ('SKF') and Tata Steel Ltd., Bearing Division ('Tata Bearing'), was involved in cartelisation in the domestic industrial and automotive bearings market from 2009 to 2014.



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2. From such application, the Commission noted that when the steel prices (which is the major raw material to manufacture bearings) started increasing 2009 onwards, there was co-ordinated action amongst the captioned five companies to pass on such increase to the automotive and industrial Original Equipment Manufacturer ('OEM') customers and in the distribution segment of the market. Such cartelisation existed 2009 onwards till late 2014 and was confined only to the Indian market. Such co-ordination operated across industry segments within India to seek uniform price increase from various OEMs. As a general practice, if there was an increase in the manufacturing cost of bearings, including due to increase in the steel prices, the OEMs accommodated certain increase in price from time to time. However, they generally did so only when all the suppliers demanded for such an increase. Hence, under the cartel arrangement, these five companies agreed on the percentage increase in steel price that each of them would represent to the OEMs, to seek a price increase from them. The rationale behind such co-ordination was to simultaneously send out price increase letters to the OEMs and distributors in the aftermarket, specifying the percentage increase in steel prices and a request to increase the existing supply prices, as otherwise the likelihood of getting a price increase was believed to be less certain. Noting such observations, the Commission passed an order dated 17.08.2017 under Section 26 (1) of the Act, forming a *prima facie* view of contravention of the provisions of Section 3 (1) read with Section 3 (3) (a) of the Act by the captioned companies and hence, referred the matter to the Director General ('DG') for causing an investigation into the matter and submitting a report.
3. During pendency of investigation before the DG, an application dated 12.09.2018 under Section 46 of the Act read with Regulation 5 of the LPR was also received on behalf of NEI.

#### **Investigation by the DG:**

4. After investigating the matter, the DG submitted its investigation report. In the report, the DG found that the representatives of four companies *namely* NEI, Schaeffler, SKF and Tata Bearing attended two meetings in Delhi on 03.11.2009 and 31.01.2011, in which pricing strategies to be adopted for seeking price increase from the Industrial and Automotive OEMs and in the aftermarket were discussed. From the e-mail communications of the representatives of the companies which were confronted to them



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during their depositions, the DG found that in the aforesaid meetings, agreement upon percentages of price revision to be sought from OEMs was arrived at between these four companies. Further, the DG found evidences of communications between the competitors from their Call Detail Records ('CDRs') as well. However, from the evidence on record, the DG found that consensus/ understanding for concerted price increase in aftermarket segment could not be established.

5. The DG also noted that there was no indication of any actual concerted price increase except in a few cases like for Bajaj Auto Ltd. during July 2010 and for MSIL in March to July 2011 and that the price revisions did not show that the prices of bearings sold by the four OPs to the OEMs moved in tandem with each other. However, in light of the fact that these four competitor companies controlled nearly 3/4<sup>th</sup> of the market and they shared information which is in the nature of confidential business information with a clear intent and objective to achieve higher than competitive price of bearings sold by them to the OEMs, the DG was of the view that adverse effect on competition in the market would certainly be substantial. As per the DG, merely because the competitors may be subsequently compelled to deviate from the rates/ prices earlier agreed due to negotiations with OEMs or other reasons, it cannot be regarded as either absence of collusion or absence of appreciable adverse effect on competition ('AAEC') resulting from collusion.
6. Thus, based upon the above, the DG found cartelisation amongst the four companies *namely* NEI, Schaeffler, SKF and Tata Bearing in contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act. However, no evidence of cartelisation could be found by the DG against Timken. As per the DG, the period of cartelisation was from 03.11.2009 till at least 31.03.2011. The DG also found 11 'persons' of NEI, Schaeffler, SKF and Tata Bearing liable for contravention of the provisions of the Act in terms of Section 48 of the Act. However, as per the DG, the allegations of cartelisation in the distribution/ aftermarket were not substantiated.

#### **Proceedings before the Commission:**

7. Upon receipt of the DG's investigation report, the Commission, *vide* its order dated 21.05.2019, forwarded copy of the non-confidential version of the same to the above-stated five companies and their 11 'persons' whose liability under the provisions of Section 48 of the Act had been fixed by the DG (hereinafter, the '**parties**'). The



Commission directed the parties to file their suggestions/ objections, if any, to the investigation report of the DG and their financial statements/ Income Tax Returns for the Financial Years ('FYs') 2009-10 and 2010-11, and thereafter appear for an oral hearing in the matter on 09.07.2019, which date was later postponed to 24.09.2019 *vide* order dated 02.07.2019.

8. The parties filed their suggestions/ objections to the investigation report of the DG and thereafter on 24.09.2019, 03.10.2019 and 14.10.2019, the Commission heard the oral submissions made by various parties on the DG Report and decided to pass an appropriate order in the matter.

**Submissions of the parties:**

9. In their objections and suggestions to the DG Report, during the oral hearings, and in their written submissions, the parties have made the following submissions:

9.1 Schaeffler and Mr. Rajiv Ghai of Schaeffler

- (i) Schaeffler is in agreement with the investigation report of the DG.
- (ii) It has been submitted by Tata Bearing that between the period October 2009 to December 2011, Mr. Harsh Sachdev and Mr. Sanjiv Mohan of Tata Bearing made only 7 and 12 visits to Delhi respectively. However, of the same 2 visits were on the dates of the meetings disclosed by Mr. Sarabjit Singh of Schaeffler. This cannot be a mere co-incidence.
- (iii) Mr. Lokesh Saxena of SKF had participated in the meeting held on 03.11.2009 telephonically though CDRs obtained by the DG could not corroborate this fact. This may have been because the CDRs of only Mr. Lokesh Saxena's mobile phone were retrieved and his participation through any landline phone remains uncorroborated.
- (iv) Schaeffler has made full, true and vital disclosures to the Commission and has provided continued co-operation to the DG to help establish contravention of the provisions of the Act, alongwith its individuals. Therefore, it is entitled to 100% reduction in the penalty amount, if any, to be imposed by the Commission.



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- (v) Under the provisions of Section 2 (c) of the Act, a ‘cartel’ also includes an attempt to cartelise. Thus, the mere fact that co-ordinated price increase, though attempted, could not be implemented, cannot be considered as a safe harbour from penal consequences. Further, the standard of presumption of AAEC in a case of contravention of Section 3 (3) of the Act when the investigation arises out of an information under Section 19 (1) of the Act is distinguishable from where investigation arises out of application under Section 46 of the Act.

## 9.2 Mr. Rajendra Anandpara of Schaeffler

- (i) In the DG Report, bearings market and share of the parties in the same is overstated. Nearly 40% of bearings are imported in India. That apart, there are some small and medium sector players in the market as well. Thus, the share of parties in the bearings’ domestic market stated to be 75% in the DG Report, is overstated.
- (ii) Though the sales team of Schaeffler led by Mr. Sarabjit Singh had informal contacts with the competitors of Schaeffler and Mr. Rajendra Anandpara was aware of such contacts, this was mainly to gather competitive intelligence and gauge other companies’ proclivity to seek price increase from OEMs as Schaeffler was under high cost pressure because of price increase of steel and refusal on part of OEMs to entertain price increase requests. Years 2008-09 were periods of economic recession. Pricing negotiations and decisions with regard to large automotive OEMs were always guided and steered by Mr. Rajendra Anandpara and in such negotiations and decisions, he was never guided or influenced by the informal discussions which Schaeffler’s sales team had with competitors. Mr. Rajendra Anandpara took independent decisions based on his professional wisdom, Schaeffler’s long term strategy and for protection of its long term interests. The ‘agreements’ or ‘consensus’ mentioned in some of Mr. Sarabjit Singh’s internal e-mails of 2009 and 2011 were his own enthusiastic assessment based on cognitive bias. Actual price increases quoted by Schaeffler were not in accordance with what was allegedly decided. Further, the letters were sent to the OEMs several months after what was allegedly decided.



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- (iii) Though Mr. Rajendra Anandpara should have acted to stop such behaviour and contacts of Schaeffler's sales team, lack of required sensitivity about the prevailing law at the time led him to not do so.
- (iv) Definition of OEM market in the DG Report is inaccurate and over expanded. The DG report mainly pertains to selected large Automotive OEM customers like in two-wheeler industry and tractor industry with some data on other automotive customers. However, automotive industry consists of many OEMs (both Tier 1 and Tier 2) and industrial OEMs consist of multiple segments like construction machinery, electrical machinery, industrial gears *etc.* Thus, it cannot be said that reported conversations related to all automotive and industrial OEMs.
- (v) Large automotive customers have many purchasing/ sourcing options besides the parties in the present matter. Manufacturers like NTN, NSK, Koyo, TPI, CNU and HCH are very large global companies which have more than enough capabilities to cause disruption or replace the present parties as bearing suppliers, at any large Indian automotive customer.

### 9.3 NEI and Mr. Rohit Saboo and Mr. Sanjeev Taparia of NEI

- (i) The DG has rightly observed that there was no co-ordination in the aftermarket.
- (ii) The DG has erred in placing reliance upon the CDRs procured from Vodafone and Airtel. Vodafone and Airtel have clearly submitted before the DG that completeness and authenticity of such records cannot be guaranteed and such CDRs are not even supported by a Certificate from the service providers in terms of Section 65B of the Indian Evidence Act, 1872.
- (iii) The OEMs have not stated that they perceived any instance of cartelisation amongst their suppliers.
- (iv) The DG failed to consider the countervailing buying power exerted by the OEMs. Bearing industry is actually a price taker. The OEMs have considerable negotiating power with respect to the prices at which the bearings are to be supplied to them. Even the DG in its report has observed that the OEMs have considerable bargaining power as they buy the product in bulk.



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This should be taken into account alongwith the fact that the DG has found that there was no impact on the final price of bearings due to the meetings and discussions of the parties.

- (v) The nature of cartel in the present case is as that of a 'coercive cartel' since the same brought about at the instance and insistence of the OEMs themselves. The very fact that the OEMs were unwilling to entertain price increase requests made individually by the bearings manufacturers led to the manufacturers demanding such increase in a cooperative manner. In some instances, OEMs such as International Tractors Ltd. infact, themselves expressly stated the same thing.
- (vi) The DG has failed to appreciate the role of Timken in terms of its participation in the meetings and discussions. NEI had disclosed before the DG that there were discussions by way of multi-lateral meetings and telephonic conversations amongst NEI, Schaeffler, SKF, Timken and Tata Bearing and there were also discussions amongst Mr. Sanjeev Taparia of NEI and other persons including Mr. P.M. Patel, Managing Director of Timken on the sidelines of Ball and Roller Bearings Manufacturers Association during the period 2006-2009 regarding price increase in the input cost and increase to be sought from OEMs. Further, notwithstanding the fact that the DG did not arrive at a finding regarding the meeting held on 22.04.2011 amongst the parties, it is pertinent that the e-mail dated 22.04.2011 addressed by Mr. Sarabjit Singh of Schaeffler to Mr. Rajendra Anandpara of Schaeffler states that the participants of the meeting included Timken. The statement of Mr. Sanjeev Taparia of NEI recorded before the DG also corroborates the presence of Timken in the meeting of the parties that took place after 31.01.2011.
- (vii) The DG, by holding Mr. Rohit Saboo of NEI liable under the provisions of Section 48 (1) of the Act, without granting an opportunity of hearing to him, has acted in gross violation of the principles of natural justice.
- (viii) The Commission should take into consideration various mitigating factors which justify imposition of *nil* or nominal penalty upon NEI. These include the fact that NEI is not a habitual offender, it has co-operated with the DG during investigation at all stages, it has put in place a competition audit and



compliance program to train and educate its management, staff and members on the competition regime in India, it was forced to participate in the cartel due to rising steel prices, there was no effect in the market in the form of increase in prices, NEI suffered huge losses during the period of cartel, *etc.*

- (ix) In case the Commission decides to hold NEI guilty of contravention of the provisions of the Act, the penalty, if any, to be imposed upon it should be computed based on 'relevant turnover'. Since the finding in the DG Report is only with regard to supply of bearings to the industrial and automotive OEMs that too in the domestic market, and there is no finding in the DG Report with regard to export market or the aftermarket, the 'relevant turnover' in the instant matter should be the turnover derived by NEI from sale of bearings to the domestic automotive and industrial OEMs only. Further, the penalty should be imposed only for the duration of the period of cartel identified by the DG *i.e.* 03.11.2009 to 31.03.2011.
- (x) The statement of Mr. Sarabjit Singh of Schaeffler regarding his e-mails and that of Mr. Rajendra Anandpara of Schaeffler regarding such e-mails are contradictory in nature. Therefore, the statements of such individuals of Schaeffler cannot be attributed any credibility as the same are not reliable.
- (xi) The DG, in reaching its conclusion of violation of the provisions of the Act in its report, has heavily relied on the information provided by NEI and its officials, without the support of which, the DG could not have reached its conclusion. The evidences of e-mails of Mr. Sarabjit Singh of Schaeffler could not have been considered by the DG in isolation without the information furnished by NEI. Therefore, it is entitled to maximum reduction possible in the penalty amount, if any, to be imposed by the Commission.

#### 9.4 SKF

- (i) The DG has conducted the investigation in the present case in a non-transparent manner. During the entire investigation, the only information available with SKF was the copy of the order passed by the Commission under the provisions of Section 26 (1) of the Act. No information regarding the names of other parties in the matter or the allegations against SKF was provided to SKF during investigation. The DG did not even confront SKF



with all the material relied upon by it against SKF or grant it an opportunity to cross-examine the witnesses. The DG did not approach SKF to seek inputs on critical issues and serious allegations but only approached one ex-employee of SKF *viz.* Mr. Lokesh Saxena for deposition. Being an ex-employee, Mr. Lokesh Saxena could not have been taken as SKF's representative before the DG. All this points to the fact that the DG investigation is fraught with several methodological, procedural and analytical errors and inconsistencies and that the investigation has been conducted arbitrarily in gross violation of the principles of natural justice. SKF has, till date, not been provided with access to all the material relied upon against it which has severely impaired SKF's ability to defend itself suitably in this matter.

- (ii) The DG has approached the investigation with pre-determined conclusions. This is evident from the fact that the DG asked leading questions while recording the statement of SKF's former employee *viz.* Mr. Lokesh Saxena. The DG also misinterpreted the statements made by certain deponents to arrive at wrong conclusions; it incorrectly analysed the reasons for price increase sought by SKF, *etc.* The DG ought to have considered the input cost trends and subsequent price increase justifications and other inputs provided by SKF.
- (iii) The findings of the DG are based on insufficient evidence, which is also uncorroborated and contradictory. The DG has based its investigation largely on two purported meetings and self-contradictory and frivolous statements of Mr. Sarabjit Singh of Schaeffler made during his deposition and cross-examination. Mr. Sarabjit's Singh's statements have been contradicted and not fully corroborated by his own colleagues like Mr. Rajendra Anandpara of Schaeffler. Further, Mr. Sarabjit Singh's testimony with regard to the alleged meeting held on 22.04.2011 has been discredited by the DG. The DG has noted with regard to this meeting that though Mr. Sarabjit Singh has stated that Mr. Sanjeev Kumar of Timken has attended this meeting, such fact could not be established. As Mr. Sanjeev Kumar had resigned from Timken from 31.12.2009, he could not possibly have attended this meeting. Further, the DG has noted that though Mr. Sarabjit Singh has stated that Mr. Lokesh Saxena attended the alleged meeting held on 22.04.2011 on behalf of SKF, Mr.



Lokesh Saxena was travelling outside Delhi (where the alleged meeting took place) during that period. This raises serious questions about the veracity and credibility of Mr. Sarabjit Singh's statements and therefore, his entire evidence is unreliable.

- (iv) There is not sufficient evidence to prove the attendance of SKF's representatives in either of the two meetings held on 03.11.2009 and 31.01.2011. In the alleged meeting held on 03.11.2009, the only evidence against SKF is the alleged telephonic participation of Mr. Lokesh Saxena, which is not proved by the CDRs gathered by the DG and for which the sole evidence is the uncorroborated testimony of Mr. Sarabjit Singh of Schaeffler. The DG has incorrectly noted that Mr. Sanjeev Taparia of NEI had confirmed the presence of Mr. Lokesh Saxena in the meeting held on 03.11.2009, whereas Mr. Sanjeev Taparia has not even mentioned SKF's/ Mr. Lokesh Saxena's name in the context of this meeting. Regarding meeting held on 31.01.2011, Mr. Lokesh Saxena has categorically stated that he does not recall any such meeting and the DG has no evidence, apart from statements of persons, to prove otherwise. Further, Mr. Rajiv Ghai of Schaeffler had categorically stated to the DG that he knew only Mr. Pranab Laskar from SKF (which implies that he did not know Mr. Lokesh Saxena). Had Mr. Lokesh Saxena been present in the meeting held on 31.01.2011, Mr. Rajeev Ghai would have been introduced to Mr. Lokesh Saxena. Mr. Sanjeev Taparia of NEI has also only stated that "...came to know through this telephonic call that Mr. Lokesh Saxena of SKF attended the meeting". Since he was himself not physically present in the alleged meeting held on 31.01.2011, he could not have confirmed the participants of the same. Just because Mr. Lokesh Saxena, who was based in Delhi and worked in SKF's Delhi office, was present in Delhi on the date of this alleged meeting, he cannot be held to have conclusively attended the same.
- (v) Mr. Lokesh Saxena of SKF did not have the mandate to attend any of the alleged meetings or discuss or agree on the prices. He was in-charge of only the two-wheeler OEM segment and could not have been possibly authorised to discuss and agree on prices with respect to customers and business segments



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that fell outside his scope of authority (such as tractors, 4 wheelers and industrial OEMs).

- (vi) No chain of events evidencing any co-ordinated pricing strategy is established. The findings of the DG are based on two remote and distant alleged meetings, with no nexus to each other. There is not even a shred of evidence to show that the parties ever met or discussed prices on any other occasion either before, in between or after the two alleged meetings held on 03.11.2009 and 31.01.2011.
- (vii) SKF has taken all decisions on pricing during the relevant period independently and based upon commercially justifiable reasons. The fluctuation in steel prices (constituting 55-60% of the input cost) that were impacting SKF's production costs over the period was the justifiable reason for seeking price increase. The DG has not made any observation as to whether the price increase sought or received were unjustifiably high. SKF is a market leader in certain segments of bearings. An established player like SKF does not need to resort to any illegal means to achieve legitimate price increases. In the absence of any incentive for SKF to collude with its competitors for a small portion of business, SKF would not put at risk its overall business and commercial operations.
- (viii) There are no prior or subsequent instances of alleged collusion by SKF; however, SKF had successfully sought price increase both prior and post to the period identified by the DG. If SKF could achieve a result by legitimate means in the past, why would it for two years, without any aggravating factors and circumstances, engage in illegal acts.
- (ix) The DG has failed to seek relevant and critical evidence from customers regarding their concerns or doubts about existence of the alleged cartel.
- (x) The DG has been unable to identify any 'Plus Factors' to establish parallel or co-ordinated behaviour between the parties and mere price parallelism cannot be held to be sufficient proof of existence of the cartel. In the present matter, there is no conclusive proof of price parallelism. Hence, the applicable legal standards for establishing contravention under the provisions of Section 3 of the Act are not met. The DG has found no communication between SKF and other parties whether in relation to alleged price fixation or otherwise. The DG



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has based its entire investigation on two purported e-mails and treated the contents of these e-mails as gospel truth. Even Mr. Rajendra Anandpara of Schaeffler has asserted throughout that he never intended Mr. Sarabjit Singh to discuss and/ or agree on prices or provide any commitments in relation thereto. Thus, there was no meeting of minds, arrangement, understanding or action in concert amongst parties.

- (xi) The DG has itself concluded that there was no concerted price increase by the parties; yet without providing sufficient reasons and evidence, it has held SKF to be in contravention of the provisions of the Act. The percentage of price increase sought by the parties were different and did not reflect the alleged discussions. The timings of seeking price increase were also different and varied across the brands. The price increases eventually granted by OEM customers were also vastly different from the price increase sought from them. Thus, there was no consequential impact of the alleged agreement amongst the parties in the market.
- (xii) The DG has failed to determine any 'relevant market' in which the alleged anti-competitive conduct took place between the parties.
- (xiii) The DG also did not assess as to whether the products supplied to the OEM customers were similar/ same. In accordance with the e-mails dated 06.11.2009 and 03.02.2011, the alleged agreement to seek price increase from OEMs was not across all products or customers but rather limited to only specific automotive or automotive OEMs. All the parties do not supply same bearings to all OEM customers and industrial and automotive OEM customers are also different. Hence, it was imperative for the DG to have enquired about the relevant products in the present matter. Further, apart from Crompton Greaves, no other industrial customer's prices have been analysed by the DG.
- (xiv) The observations and conclusions of the DG do not take market dynamics into consideration. The DG failed to acknowledge the fact that in this market, pricing is dictated by the customers and not the bearing companies; therefore, any co-ordination on pricing between bearing manufacturers is impossible. Further, the parties supply different types of bearings to different OEM customers which are at times also manufactured to the specifications received



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from OEM customers. All parties do not manufacture or distribute the same range of bearings to same customers all the time. The bearings supplied to different customers will have differing cost of production depending upon specifications, quantity, intended use, quality, *etc.* Hence, the assumption of the DG that SKF and others discussed and agreed on a uniform price increase proceeds from an incomplete understanding of market dynamics and operational realities of bearings industry. Furthermore, the DG has failed to consider the strength of competition from foreign bearing manufacturers who would have been ready to supply the same products at much cheaper prices to the OEM customers had the parties increased their prices through a cartel artificially and unreasonably.

- (xv) The Commission should consider mitigating factors like having robust competition law training programme, non-implementation of alleged agreement, no impact on prices, no exchange of price sensitive information, *etc.* before deciding to impose penalty on SKF.
- (xvi) Penalty, if any, must be imposed only upon SKF's 'relevant turnover' which is the turnover generated by SKF from the identified customers during the quarter of October-December 2009 to January-March 2011.
- (xvii) Certain parties appear to have filed applications seeking lesser penalty treatment under Section 46 of the Act. However, the applicant(s) do not appear to have met even the bare minimum requirement for approaching the Commission with such an application.

#### 9.5 Mr. Rakesh Makhija and Mr. Shishir Joshipura of SKF

- (i) The DG has incorrectly and prematurely identified Mr. Rakesh Makhija and Mr. Shishir Joshipura to be liable under Section 48 (1) of the Act. Before fastening liability on officials of a company, a finding of the contravention against the company has to be given by the Commission. Proceedings against officials can be initiated by the Commission only after finding of contravention is recorded by the Commission under Section 27 of the Act.



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- (ii) Mr. Rakesh Makhija and Mr. Shishir Joshipura were never approached by the DG during the course of investigation and as such, had no occasion to put forth their case or rebut the allegations made against SKF. They were not confronted with the evidence used against them and their right to cross-examination was also, therefore, denied. This is a serious lacuna in the investigation and on this ground alone, the findings of the DG Report deserve to be set aside.
- (iii) The alleged contravention, if any, was committed without the knowledge of Mr. Rakesh Makhija and Mr. Shishir Joshipura. They were only the Managing Directors of the company and their role was limited to ensuring that infrastructure to service business opportunities was up to date and delivered according to commitments of company. Their opinion and involvement was sought by Global Sales Head only if the deals involved any strategic decision. They were responsible for the growth and development of the company. They were not privy to the details of negotiations or contracts that would take place on day to day basis with customers. In the reply filed by SKF before the DG, SKF had clearly identified the key individuals involved in the pricing decisions of the company. However, the DG, rather than calling upon them, fastened liability on Mr. Rakesh Makhija and Mr. Shishir Joshipura.
- (iv) The alleged e-mails dated 06.11.2009 and 03.02.2011 were exchanged only between the employees of Schaeffler internally and no employee of SKF, present or erstwhile, was marked therein or privy to the contents of the same. The entire finding of the DG is based on these two emails only.
- (v) The statement of Mr. Sarabjit Singh of Schaeffler and contents of his e-mail dated 22.04.2011 have already been found by the DG to be not corroborated by the evidence gathered during investigation. However, applying similar analogy, the other two meetings held on 03.11.2009 and 31.01.2011 alleged by Mr. Sarabjit Singh were not analysed by the DG, despite the fact that the statements made by Mr. Sarabjit Singh have been contradicted by Mr. Rajendra Anandpara of Schaeffler, the recipient of these purported e-mails of Mr. Sarabjit Singh. However, the DG has conveniently ignored such



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contradictions and held the statements made by Mr. Sarabjit Singh in regard to such two meetings to be trustworthy.

- (vi) The DG itself, after conducting a post meeting price analysis, has observed that *“The analysis of price revision of bearings supplied by the four OPs to the Automotive and Industrial OEMs in 2010 and 2011 do not indicate any concerted price increase with the couple of exceptions like Bajaj Auto Ltd. during April-July 2010 and MSIL in March-July 2011. Thus, the price revisions do not show that the price of bearings sold by the four competitors to the OEMs moved in tandem ...”*. However, despite observing the same, the DG erroneously proceeded to hold that the alleged conduct of the parties resulted in AAEC in the market.
- (vii) Finding of contravention has been given by the DG despite noting that price of steel, which is the principal raw material for the bearings, fluctuated sharply from October 2009 to February 2011. Based on such finding of the DG, seeking price increase from the OEMs by the parties cannot, by any stretch of imagination, be considered to draw an inference of collusion amongst the parties.

#### 9.6 Mr. Lokesh Saxena of SKF

- (i) Before fixing liability on any officer of a company under Section 48 (2) of the Act, determination of contravention by the company has to be made. In the present matter, no such determination has yet been made.
- (ii) There is *ex-facie* no violation of any provisions of the Act by SKF. The DG has found that prices of bearings are negotiated at manufacturer level and not at industry level. The DG has also found that there are several other factors including bargaining powers of the OEMs which determine price increase. Nothing in the DG Report shows that there was any actual price determination by the parties. The percentages of price increases sought, price increases granted by the OEMs and the timings of seeking price increases across different parties was different. Thus, no co-ordinated action is established in the present case. Even after several years of the alleged act of collusion, there has been no actual AAEC in the market.



- (iii) The present case is extremely belated and may be barred by law of limitation. Mr. Lokesh Saxena was an employee of SKF from December 2001 till June 2017. From September 2007 to December 2011, Mr. Lokesh Saxena served as General Manager in the Electric and 2-wheeler segment of SKF and he was responsible for sales and marketing only within these segments. It was not possible for him to be present in any alleged meeting or take any alleged co-ordinated decision with regard to automotive or industrial OEMs, which segments he did not handle at all.
- (iv) Opportunity of cross-examination was denied to Mr. Lokesh Saxena by the DG merely because he had sought a week's time to prepare for cross-examination. This is in gross violation of principles of natural justice.
- (v) There is no 'proof' apart from the bald allegation that the alleged contravention took place with the consent or connivance of Mr. Lokesh Saxena. There is no cogent and valid material to show that Mr. Lokesh Saxena took part in any of the two alleged meetings. It has not even been established by the DG that Mr. Lokesh Saxena was competent to fix/ determine prices on behalf of his company.
- (vi) In the alleged meeting held on 03.11.2009, Mr. Sarabjit Singh of Schaeffler had stated that Mr. Lokesh Saxena, on behalf of SKF, telephonically participated. However, as per CDRs gathered by the DG, no calls were exchanged between Mr. Sarabjit Singh and Mr. Lokesh Saxena on 03.11.2009. Further, the DG has incorrectly noted that Mr. Sanjeev Taparia of NEI had confirmed the presence of Mr. Lokesh Saxena in the meeting held on 03.11.2009, whereas Mr. Sanjeev Taparia has not even mentioned SKF's/ Mr. Lokesh Saxena's name in the context of the meeting.
- (vii) Regarding meeting held on 31.01.2011, Mr. Lokesh Saxena has categorically stated that he does not recall any such meeting and the DG has no evidence, apart from statements of persons, to prove otherwise. Further, Mr. Rajiv Ghai of Schaeffler had categorically stated to the DG that he knew only Mr. Pranab Laskar from SKF (which implies that he did not know Mr. Lokesh Saxena). Had Mr. Lokesh Saxena been present in the meeting held on 31.01.2011, Mr. Rajeev Ghai would have been introduced to Mr. Lokesh Saxena. Mr. Sanjeev



Taparia of NEI has also only stated that “...came to know through this telephonic call that Mr. Lokesh Saxena of SKF attended the meeting”; since he himself was not physically present in the alleged meeting he could not confirm the participants of the same. Just because Mr. Lokesh Saxena, who was based in Delhi and worked in SKF’s Delhi office, was present in Delhi on the date of this alleged meeting, he cannot be held to have conclusively attended the same.

#### 9.7 Tata Bearing and Mr. Harsh Sachdev and Mr. Sanjiv Mohan of Tata Bearing

- (i) The DG has failed to grasp the dynamics and nuances of the domestic bearings industry. It has disregarded the glaring inconsistencies in the evidences furnished by Schaeffler and NEI and their concerned executives. It has cherry picked the evidence on record and selectively relied on parts of the same to arrive at a conclusion of cartelisation. When construed as a whole, the evidence on record itself shows that no cartelisation existed between the parties. However, the DG, based on his pre-determined conclusions, worked backwards and concluded that a cartel existed.
- (ii) The DG has failed to consider factors like volatility of steel prices, countervailing buying power of OEMs, market structure of the industry and position of Tata Bearing (which was merely a price taker) therein while assessing the price revisions sought by the parties. Existence of a cartel cannot be concluded merely based on the fact that the parties had requested price revisions from their OEM customers from time to time.
- (iii) The DG has failed to consider that owing to the job description of the concerned executives of the parties, there could have been a legitimate context of their acquaintance with each other and contacts among themselves.
- (iv) With regard to the first alleged meeting held on 03.11.2009, the CDRs show that there were no calls exchanged between Mr. Sanjiv Mohan of Tata Bearing with either Mr. Sarabjit Singh of Schaeffler or Mr. Sanjeev Taparia of NEI on the date of the alleged meeting. The mere presence of Mr. Sanjiv Mohan in Delhi on that day does not establish his participation in this alleged meeting. In addition to Tata Bearing distribution network, a large number of OEMs with which Tata Bearing has business relationships are based in and around



Delhi. The travel details of Mr. Sanjiv Mohan shows that he travelled to Delhi around the date of this alleged meeting to meet the channel customers of Tata Bearing. In fact, his travel details show that he travelled to Delhi at least 12 times between October 2009 and December 2011.

- (v) Though, in this alleged meeting, participants allegedly agreed to seek price increases from OEMs like Bajaj, TVS, Yamaha and e-motor manufacturers, however at that point of time, Tata Bearing was not even supplying to some of these OEMs. Therefore, there is no cogent reason that could have motivated Tata Bearing to participate in the alleged meeting. Mr. Sanjeev Taparia could not even recall the venue of this meeting. Alleged telephonic participation of Mr. Lokesh Saxena of SKF in this meeting is also highly doubtful.
- (vi) With regard to the second alleged meeting held on 31.01.2011, the CDRs show that there were no calls exchanged between Mr. Sanjiv Mohan or Mr. Harsh Sachdev of Tata Bearing with either Mr. Sarabjit Singh of Schaeffler or Mr. Sanjeev Taparia of NEI on or around the date of the second alleged meeting. The mere presence of Mr. Sanjiv Mohan and Mr. Harsh Sachdev in Delhi on that day does not establish their participation in this alleged meeting. They had to visit Delhi quite frequently to meet the OEM customers and channel partners of Tata Bearing. Travel details show that Mr. Harsh Sachdev was in Delhi around the date of this alleged meeting to attend a meeting with Hero Honda Motors Ltd. and Mr. Sanjiv Mohan was in Delhi to meet the channel partners of Tata Bearing. In fact, the travel details of Mr. Harsh Sachdev show that he travelled to Delhi at least 7 times between October 2009 and December 2011.
- (vii) Mr. Harsh Sachdev has made visits to different places 87 times between October 2009 and December 2011, while Mr. Sanjiv Mohan had made 117 visits.
- (viii) There is contradiction between Schaeffler and NEI in relation to one of the fundamental questions of cartel arrangement *i.e.* whether there was consensus to increase prices in the distribution/ aftermarket segment. There is also a fundamental disconnect in the evidence provided by Schaeffler and its



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executive Mr. Rajendra Anandpara regarding the purpose of the alleged meetings.

- (ix) From the DG's own assessment of the price revisions proposed by the parties, it is evident that the parties sought varying percentages of price increase from the OEM customers and in most instances, these were not even in conformity with what was allegedly agreed upon by the parties. Despite this, the DG has arrived at an erroneous conclusion that there was an agreement amongst the parties to seek price increases from the OEM customers in a concerted manner. The actual price revisions were infact granted by OEMs (who exercised overwhelming countervailing buyer power) and hence, there could have been no AAEC had the parties actually acted pursuant to the alleged consensus. Further, even if the same rates of price revision had been sought by the parties from the OEM customers, it would not have amounted to fixation of prices as the actual prices at which each party would have supplied bearings would have remained different.
- (x) The DG has failed to identify the unreliability and possible falsehood associated with the internal e-mails authored by Mr. Sarabjit Singh of Schaeffler and his statement on oath. Mr. Sarabjit Singh worked for Delhi and Baroda office of Schaeffler between 2009 and 2012. He would also spend time at his family home in Delhi when he was in Delhi. All three of the alleged meetings took place on or around a public holiday/ weekend. It appears that Mr. Sarabjit Singh used these meetings as a ploy for official pretext to make personal visits where travel expenses are borne by the company. Mr. Rajendra Anandpara, the recipient of these e-mails, himself stated that he never took such e-mails seriously and that there was no commitment from Schaeffler's management to any such discussions. Further, Mr. Sarabjit Singh in his cross-examination has confirmed that his profile mentioned in the annual report of Schaeffler accurately describes him as person with "*insatiable drive to pursue goals and not rest till success is achieved*". Thus, Mr. Sarabjit Singh was an ambitious person and it is likely that these meetings were fabricated by him to demonstrate what he assumed could be his leadership skills in furtherance of anticipated professional gains.



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- (xi) The CDRs obtained by the DG from Vodafone and Airtel are inadmissible in evidence. Vodafone and Airtel have submitted before the DG that completeness and authenticity of such records cannot be guaranteed and such CDRs are not even supported by a certificate from the service providers in terms of Section 65B of the Indian Evidence Act, 1872.
- (xii) Not a single participant of the cartel has admitted to there being in place any monitoring mechanism with respect to the cartel. There were also no follow up meetings in this regard.
- (xiii) In case the Commission gives a finding of contravention against Tata Bearing, no occasion for imposition of penalty arises as there was no impact on the market and no harm to the consumers was caused.
- (xiv) Penalty, if any, should only be imposed on the 'relevant turnover' of Tata Bearing which is the revenue generated by it from sales to those OEM customers in relation to which cartelisation is proved.
- (xv) Individuals of Tata Bearing in terms of Section 48 of the Act cannot be proceeded with unless the Commission gives the finding of contravention against Tata Bearing.

#### 9.8 Timken

- (xvi) The DG in its investigation report has rightly concluded that Timken was not a part of the alleged anti-competitive conduct. Even NEI and Schaeffler have concurred with the findings of the DG Report. On the other hand, SKF and Tata Bearing have argued that the DG Report having glaring inconsistencies, cannot be relied upon and no contravention in the matter is made out. As per Timken, irrespective of whether the findings of the DG Report are affirmed or whether the DG Report is found to be not reliable, no contravention against Timken is made out.



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### **Analysis:**

10. The Commission has perused the applications filed by Schaeffler and NEI under Section 46 of the Act, the investigation report submitted by the DG and the evidences collected by the DG, the objections and suggestions to the DG Report and the written submissions filed by the parties, the material available on record and also heard the oral arguments made by the respective learned counsel representing the parties in the matter.
11. At the outset, the Commission notes that SKF, in its objections/ suggestions to the DG Report, has stated that there have been several methodological, procedural and analytical errors and inconsistencies in the DG Report and that the investigation has been conducted by the DG arbitrarily in gross violation of the principles of natural justice. In this regard, the Commission finds that such claims made are without merit. Further, SKF has even stated that till date, it has not been provided access to all the material relied upon against it which has severely impaired its ability to defend itself suitably in this matter. However, the fact of the matter is that the investigation report submitted by the DG (non-confidential version) was duly forwarded by the Commission to SKF and all case records in the matter were also duly opened for inspection whereby multiple inspections were conducted by SKF and certified copies taken. Therefore, in view of the Commission, in light of the fact that all material on record has been made available to SKF, there is no merit in the plea taken by SKF that it was not provided access to all the material relied upon against it which severely impaired its ability to defend itself.
12. As regards findings of the DG, the Commission notes that the DG has found no contravention by the parties in the bearings distribution/ aftermarket segment and that the DG has also found no evidence of contravention of the provisions of the Act against Timken. In the absence of any evidence to the contrary being brought before the Commission in this regard except bald statements, the Commission agrees with the findings of the DG on these counts.
13. Coming to the automotive and industrial OEM segment of the bearings market, the Commission notes that the evidence on the basis of which the DG commenced its investigation in this market were the 3 e-mail trails submitted by Schaeffler which were addressed by Mr. Sarabjit Singh, former Vice-President (Sales and Marketing) of Schaeffler to Mr. Rajendra Anandpara, former Managing Director of Schaeffler





Anandpara, Rajendra-A Read 06-11-2009 09:26

A,

Meeting was held at Delhi involving Mr. Taparia, Mr. Sanjiv Mohan (Tata) and telephonic discussions with Mr. Lokesh Saxena (SKF).

Flwg was discussed and agreed:

- 1) Price increase to be sought from BAL, TVS, Yamaha and E-Motor Manufacturers letters at a level of 7-8% increase). There was no consensus on HHML & HMSI due to NSK threat. Suzuki bikes also no letters will be sent (they gave 10% increase, last time)
- 2) In SMP Distribution also, there is a consensus to increase prices upto 5%.

Actions:

- 1) Price increase letters for E-moto customers being released today- @8% w.e.f. 01.12.2009
- 2) New price list for SMP distribution is ready for an increase of 3-4% w.e.f. 01.12.2009 (but we will defer it by one mth).
- 3) For 2W customers, we will release the letters next week after SKF releases the letters.

MM”

15.1.2 The above e-mails show that Mr. Sarabjit Singh, on 26.10.2009 informed Mr. Rajendra Anandpara that there was a consensus amongst suppliers for writing price increase letters to all 2W (Two Wheeler) OEM customers. In the said e-mail, he also mentioned that a meeting is arranged at Delhi on 03.11.2009 involving SKF, NEI and Tata Bearing, and sought advice from Mr. Rajendra Anandpara. In reply, vide email dated 28.10.2009, Mr. Rajendra Anandpara conveyed his approval for the said meeting. Thereafter, in the e-mail dated 06.11.2009, Mr. Sarabjit Singh informed Mr. Rajendra Anandpara that the meeting took place on 03.11.2009 and also the details thereof. As per the e-mail, the said meeting was attended by Mr. Sanjeev Taparia, Marketing Head of NEI and Mr. Sanjiv Mohan, Marketing Head of Tata Bearing. Mr. Lokesh Saxena, Head of Two Wheeler Sales of SKF, had telephonic discussion with the other participants.

15.1.3 When Mr. Rajendra Anandpara and Mr. Sarabjit Singh were confronted with the above e-mails, they accepted the same. However, Mr. Rajendra Anandpara stated that though the information was exchanged between competitors using informal contacts, the same was not used by Schaeffler in making any price related



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decisions as such information was not considered trustworthy. On the other hand, Mr. Sarabjit Singh categorically stated that this meeting was attended by Mr. Sanjeev Taparia of NEI, Mr. Lokesh Saxena of SKF (through telephone) and Mr. Sanjiv Mohan of Tata Bearing.

15.1.4 When Mr. Sanjeev Taparia, Senior VP (Sales and Marketing) of NEI was confronted with the above statement of Mr. Sarabjit Singh, he accepted being a part of the meeting. His travel details furnished by NEI also showed that he was in Delhi on 03.11.2009. Further, the CDRs obtained by the DG from the service providers of the parties also supported the fact that Mr. Sanjeev Taparia was contacted by Mr. Sarabjit Singh on 03.11.2009.

15.1.5 When Mr. Sanjiv Mohan, Chief Marketing and Sales of Tata Bearing was confronted with the statement of Mr. Sarabjit Singh as regards the meeting held on 03.11.2009, he denied having attended any such meeting. However, the travel details furnished by Tata Bearing showed that he had travelled to Delhi on 03-04.11.2009. On being confronted with his travel details, he only stated that he could not recall such a visit. Tata Bearing contended before the Commission that Mr. Sanjiv Mohan made such visit to Delhi to meet the channel partners of the company, and he made multiple visits in this regard to Delhi from October 2009 to December 2011. However, the Commission notes that in his statement before the DG, Mr. Sanjiv Mohan made no such averment that he came to Delhi to meet any channel partners; rather he evasively stated that he does not recall such a visit. It is strange to note that though Mr. Sanjiv Mohan could recall some other meeting he attended in Bhubaneswar which had taken place even prior to the present meeting, it was only this particular Delhi visit that he could not recall. In view of the Commission, this points to the fact that Mr. Sanjiv Mohan's visit to Delhi was for nothing but to attend the said meeting and the contention of Tata Bearing that he was in Delhi to meet few channel partners is just an afterthought aimed to hide the real purpose of Mr. Sanjiv Mohan's visit.

15.1.6 Mr. Lokesh Saxena, then GM (Two-Wheelers and Electrical OEM) of SKF, was stated to have attended the meeting held on 03.11.2009 through telephone. His travel details furnished by SKF showed that he was in Bengaluru from 02.11.2009 to 05.11.2009. On being confronted with the statement of Mr. Sarabjit



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Singh regarding meeting held on 03.11.2009, he did not categorically refute such a conversation but stated that he does not specifically remember whether he spoke to Mr. Sarabjit Singh on 03.11.2009 though he also accepted that he spoke to persons from the competitors' companies, being part of the same industry. The CDRs obtained by the DG also showed that Mr. Lokesh Saxena of SKF had multiple telephonic conversations with Mr. Sanjeev Taparia of NEI and Mr. Sarabjit Singh of Schaeffler from 2009 to 2011 though the specific call dated 03.11.2009 could not be found in the CDRs. The Commission also notes that the CDRs of Mr. Lokesh Saxena's mobile number had been obtained by the DG. Therefore, if the said call had been placed from the landline number or any other personal mobile number of Mr. Lokesh Saxena, the same could not be traced specifically in the CDRs on record. From the statement of Mr. Lokesh Saxena admitting that he, from time to time, spoke to the competitors of SKF, when seen in light of the surrounding facts, leads to the inference that Mr. Lokesh Saxena spoke telephonically to Mr. Sarabjit Singh of Schaeffler on 03.11.2009 and the same was recorded in the e-mail dated 06.11.2009, as part of the meeting.

15.1.7 Thus, based on the aforesaid evidence, it is evident that the representatives of key competitors in the bearings market, namely, NEI, Schaeffler and Tata Bearing, attended/ participated in a meeting in Delhi on 03.11.2009. In this meeting, the representative of SKF also participated telephonically. In this meeting, pricing strategies to be adopted by these 4 parties for seeking price increase from the Industrial and Automotive OEMs were discussed and an agreement reached to.

## 15.2 Meeting dated 31.01.2011

15.2.1 Schaeffler gave details of e-mails dated 03.02.2011 and 05.02.2011 exchanged between Mr. Sarabjit Singh and Mr. Rajendra Anandpara, the contents of which are as follows:

*“ From: Singh, Sarabjit MM  
Sent: Thursday, **February 03, 2011** 10:09 AM  
To: Anandpara, Rajendra-A  
Cc: Ajay, Kabu M-O; Ghai, Rajiv M-OD  
Subject: Meeting with friends on 31st Jan at Delhi office  
A,  
Participants-Self, Ghai, Harsh Sachdev, Sanjiv Mohan, Lokesh Saxena.*



*Sanjiv Taparia could not make it due to heavy fog in Delhi, but we had telephonic conversation with him.*  
*Everybody agreed that due to steel price increase, increase is imperative but NEI was reluctant and sought more time to take decision.*  
*Rough cut suggestions (now finalised). Dist-4-5% effective 1st March.*  
*OEMs –Tractors & Automotive-price increase letter for 12% and increase settlement at -6%.*  
*2-W- Letters for 10% and suggested settlement at 4%,*  
*MM”*

*“ From: Singh, Sarabjit MM*  
*Sent: Saturday, February 05, 2011 8:50 AM*  
*To: Anandpara, Rajendra-A*  
*Subject: RE: Meeting with friends on 31st Jan at Delhi office.*  
*A,*  
*Planning to go ahead with 4.5% price increase from 01.03.2011 for distribution including retail business,”*

*“ From: Anandpara Rajendra-A*  
*Sent: Saturday, February 05, 2011 8:53 AM*  
*To: Singh, Sarabjit MM*  
*Subject: RE: Meeting with friends on 31st Jan at Delhi office*  
*A little careful in srb”*

15.2.2 The above e-mails show that Mr. Sarabjit Singh, on 03.02.2011 and 05.02.2011, informed Mr. Rajendra Anandpara about a meeting held on 31.01.2011 at Delhi Office between NEI (over telephone), Schaeffler, SKF and Tata Bearing as per which price increase of 4-5% would be effected from 01.03.2011. The e-mail dated 03.02.2011 was also copied to Mr. Ajay Kabu and Mr. Rajiv Ghai of Schaeffler. In reply to such e-mail, on 05.02.2011, Mr. Rajendra Anandpara stated that “A little careful in srb” (spherical roller bearings), is required.

15.2.3 When Mr. Rajendra Anandpara and Mr. Sarabjit Singh were confronted with the above e-mails, they accepted the same. Mr. Sarabjit Singh stated that this meeting was attended telephonically by Mr. Sanjeev Taparia of NEI, Mr. Rajiv Ghai of Schaeffler, Mr. Lokesh Saxena of SKF and Mr. Sanjiv Mohan as well as Mr. Harsh Sachdev of Tata Bearing. Mr. Rajendra Anandpara stated that such meeting was only to gather competitive intelligence and that the participants were indecisive. He further stated that the e-mail dated 05.02.2011 regarding price increase was based on raw material cost increases and that his reply was in relation to SRB.



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- 15.2.4 Mr. Rajiv Ghai, head of highway business of Schaeffler, on being confronted with the above statement of Mr. Sarabjit Singh, accepted the factum of meeting and agreed with the statement of Mr. Sarabjit Singh.
- 15.2.5 On Mr. Sanjeev Taparia of NEI being confronted with the above statement of Mr. Sarabjit Singh of Schaeffler, he also accepted being a part of the meeting telephonically. CDRs obtained by the DG also evidenced the same.
- 15.2.6 However, when Mr. Lokesh Saxena of SKF was confronted with the statement of Mr. Sarabjit Singh of Schaeffler, he simply gave an evasive reply stating that “*I do not recall this meeting*”. When confronted with the CDRs obtained by the DG showing a number of calls between him and Mr. Sarabjit Singh of Schaeffler and Mr. Sanjeev Taparia of NEI from November 2009 to October 2011, he accepted that he spoke to these two officials of NEI and Schaeffler respectively, on industry trends and input cost trends. Mr. Sanjeev Taparia of NEI also stated in his deposition before the DG that he “*came to know though this telephonic call that Mr. Lokesh Saxena of SKF attended the meeting.*” Therefore, Mr. Lokesh Saxena’s presence in such meeting has been confirmed by not one, but two separate companies’ representatives who have admitted to have been a part of this meeting.
- 15.2.7 When Mr. Sanjiv Mohan, Chief Marketing and Sales of Tata Bearing was confronted with this statement of Mr. Sarabjit Singh, he evasively stated that he could not recall such a meeting and neither could he recall the substance of the conversations he had with Mr. Sarabjit Singh of Schaeffler over the telephone in 2010 and 2011 (for which the DG had CDRs). Further, Mr. Harsh Sachdev, former Executive-in-charge, Bearings Division of Tata Steel, when confronted with such statement of Mr. Sarabjit Singh, simply stated that he could not recall such meeting and neither could he recall his travel to Delhi on this date (for which the DG had obtained his travel details from Tata Bearing). Again, Tata Bearing has contended before the Commission that Mr. Sanjiv Mohan had made such visit to Delhi to meet the channel partners of the company and Mr. Harsh Sachdev was in Delhi at the time to meet Hero Honda Motors Ltd. They also contended that both Mr. Sanjiv Mohan and Mr. Harsh Sachdev had made multiple visits in this regard to Delhi from 2009 to 2011. However, the Commission notes



that in their respective statements recorded before the DG, Mr. Sanjiv Mohan and Mr. Harsh Sachdev have made no such statements that they came to Delhi to meet any channel partners; rather they only evasively stated that they do not recall such visit. Therefore, the implication is clear, Mr. Sanjiv Mohan and Mr. Harsh Sachdev had visited Delhi to be a part of this meeting and as an afterthought, Tata Bearing has contended that they were in Delhi to meet some persons. Even Mr. Sanjeev Taparia of NEI has stated in his deposition before the DG with regard to this meeting that *“From Tata’s side, Mr. Harsh Sachdev and Mr. Sanjeev Mohan were also present.”*

15.2.8 Thus, based on the aforesaid evidence, it is evident that the representatives of key competitors in the bearings market, namely, NEI (telephonically), Schaeffler, SKF and Tata Bearing, attended a meeting in Delhi on 31.01.2011. In the said meeting, the companies discussed and agreed to send letters to the OEMs regarding price increases.

### **15.3 Meeting dated 22.04.2011**

15.3.1 Schaeffler had given details of another e-mail dated 22.04.2011 exchanged between Mr. Sarabjit Singh and Mr. Rajendra Anandpara as per which Mr. Sarabjit Singh informed Mr. Rajendra Anandpara about a meeting dated 22.04.2011 held between NEI, Timken, Schaeffler, SKF and Tata Bearing. However, the DG, during its investigation, could not establish such meeting by the evidences on record. In light of no evidence to the contrary being brought to the knowledge of the Commission by the parties during the final hearing on the DG Report except bald contentions, the Commission agrees with the findings of the DG on this count.

16. Thus, on the basis of the evidence regarding the two meetings held on 03.11.2009 and 31.01.2011 between the representatives of NEI, Schaeffler, SKF and Tata Bearing, and the evidence of numerous calls exchanged between them during the period from November 2009 to March 2011 which fact has not been denied by the parties, the Commission is of the view that it is evident that these parties had attended these two meetings regarding commercially sensitive price related information and had several telephonic discussions with the view to mutually determine the prices of bearings sold



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- by them to the OEM customers during the period from at least November 2009 to January 2011.
17. The Commission notes that NEI and Tata Bearing have contended that the CDRs obtained by the DG cannot be relied upon as a Certificate under Section 65B of the Indian Evidence Act, 1872 has not been submitted in support thereof by the service providers Vodafone and Airtel. In this regard, it is noted that the representatives of the parties have themselves not denied the factum of telephonic communications with the competitors of the companies. Rather, some of them have confirmed that they used to interact telephonically with competitors' representatives. From such facts, seen holistically in light of the other corroborating evidences on record, the Commission opines that the factum of these conversations stands well established.
  18. Thus, in the opinion of the Commission, 'cartel' as defined under Section 2 (c) of the Act, stands established amongst the 4 parties viz. NEI, Schaeffler, SKF and Tata Bearing, by way of meetings held on two occasions i.e. 03.11.2009 and 31.01.2011 wherein price revision along with minimum percentage of price increase to be quoted to the OEMs were discussed and also through telephonic discussions, brought out by the evidence on record.
  19. As per Section 3 (3) of the Act, such agreements entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.
  20. Thus, once cartel agreement between the parties is established by the evidence on record, as per Section 3 (3) of the Act, AAEC, in terms of the factors stated in Section 19 (3) of the Act, is presumed. Thus, the DG has, in its report, presuming AAEC to have been caused in the domestic automotive and industrial bearings market in India,



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concluded that the parties have contravened the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act.

21. In this regard, the parties have contended that no AAEC, as a result of their discussions, has been caused in the market which is evident from the price analysis done in the DG Report itself. Further, as per the parties, even the OEMs when asked by the DG stated that they could not perceive any instance of cartelisation amongst the parties. It was also contended by the parties that the OEMs, in any case, exert significant countervailing buying power.
22. The Commission has examined the contentions urged by the parties with regard to AAEC. The Commission is of the opinion that the pleas taken by the parties in this regard are misconceived and not available to them either in fact or in law. A bare reading of the provisions of Section 3 (1) of the Act shows that these provisions not only proscribe the agreements which cause AAEC but the same also forbid the agreements which are likely to cause AAEC. Hence, the plea taken by the parties that there is no contravention of the provisions of the Act in the present matter because no AAEC has been caused as a result of the alleged cartel between the parties, is not tenable in law.
23. Further, as has been highlighted in the earlier part of this order, once an agreement of the types specified under Section 3 (3) of the Act is established, the same is presumed to have an AAEC within India. Therefore, in the opinion of the Commission, it can well be presumed in the present matter that the impugned conduct of the parties has, in fact, resulted in AAEC within India.
24. As per the ratio of the decision given by the Hon'ble Supreme Court in the matter of *Rajasthan Cylinders and Containers Ltd. v. Union of India and Others, 2018 (13) SCALE 493*, the presumption of AAEC in a case involving contravention of the provisions of Section 3 (3) of the Act can be rebutted by the parties by placing evidence to the contrary on record. The relevant excerpts of the Hon'ble Supreme court decision in *Rajasthan Cylinders (supra)*, are as follows:

*“73. We may also state at this stage that Section 19 (3) of the Act mentions the factors which are to be examined by the CCI while determining whether an agreement has an appreciable adverse effect on competition under Section 3. However, this inquiry would be needed in those cases which are not covered by clauses (a) to (d) of sub-section (3)*



*of Section 3. Reason is simple. As already pointed out above, the agreements of nature mentioned in sub-section (3) are presumed to have an appreciable effect and, therefore, no further exercise is needed by the CCI once a finding is arrived at that a particular agreement fell in any of the aforesaid four categories. We may hasten to add, however, that agreements mentioned in Section 3(3) raise a presumption that such agreements shall have an appreciable adverse effect on competition. It follows, as a fortiori, that the presumption is rebuttable as these agreements are not treated as conclusive proof of the fact that it would result in appreciable adverse effect on competition. What follows is that once the CCI finds that case is covered by one or more of the clauses mentioned in sub-section (3) of Section 3, it need not undertake any further enquiry and burden would shift upon such enterprises or persons etc. to rebut the said presumption by leading adequate evidence. In case such an evidence is led, which dispels the presumption, then the CCI shall take into consideration the factors mentioned in Section 19 of the Act and to see as to whether all or any of these factors are established. If the evidence collected by the CCI leads to one or more or all factors mentioned in Section 19 (3), it would again be treated as an agreement which may cause or is likely to cause an appreciable adverse effect of competition, thereby compelling the CCI to take further remedial action in this behalf as provided under the Act. That, according to us, is the broad scheme when Sections 3 and 19 are to be read in conjunction.”*

25. In view of the Commission, such rebuttal can be made by the parties taking recourse to all or any of the factors provided under Section 19 (3) of the Act. In the present matter, neither of the parties has been able to demonstrate before the Commission, as to how their impugned conduct resulted into any (i) accrual of benefits to consumers; (ii) improvements in production or distribution of goods or provision of services; or (iii) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services, in terms of Section 19 (3) of the Act. By simply stating that the price revisions quoted by the parties to the OEMs are not in accord with what was decided between them, the parties cannot rebut the statutory presumption of AAEC as specified under the provisions of the Act. The very factum of the parties meeting with each other to decide the price revisions to be quoted to the OEMs, compromised their independence, enabling them to quote price revisions to the OEMs, different than what they would have otherwise quoted independently.



26. Therefore, in view of the Commission, since the parties have been unable to rebut the presumption of AAEC raised in the present matter, contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act by these 4 parties viz. NEI, Schaeffler, SKF and Tata Bearing, as a result of their cartel arrangement reached through the meetings held on 03.11.2009 and 31.01.2011, stands established.
27. With regard to the liability of individuals of these 4 entities, the DG has found the following persons of NEI, Schaeffler, SKF and Tata Bearing liable in terms of the provisions of Section 48 (1) of the Act, being in-charge of and responsible to their respective companies for the conduct of the business of the companies:

OP	Person	Designation
OP-2	Rohit Saboo	President and CEO, 03.11.2009 to 31.03.2011
OP-3	Rajendra Anandpara	Managing Director, 03.11.2009 to 31.03.2011
OP-4	Rakesh Makhija	Managing Director, 03.11.2009 to 30.11.2009
	Shishir Joshipura	Managing Director, 01.12.2009 to 31.03.2011
OP-5	Harsh Sachdev	Executive in-charge of Bearings Division, 03.11.2009 to 31.03.2011

28. Before the Commission, neither of the above individuals have been able to prove that the contravention committed by their respective companies was without their knowledge or that they had exercised all due diligence to prevent the commission of such contravention. Though Mr. Rakesh Makhija and Mr. Shishir Joshipura of OP-4 have contended that their role in OP-4 was limited to ensuring that infrastructure to service business opportunities was up to date and delivered according to commitments of company, their opinion and involvement was sought by Global Sales Head only if the deals involved any strategic decision, they were responsible only for the growth and development of the company, and that they were not privy to the details of negotiations or contracts that would take place on day to day basis with customers, they have been unable to give any cogent evidence that they had no knowledge of the cartel activities being indulged into by OP-4 or that they had exercised all due diligence to prevent the commission of such contravention. Therefore, by virtue of the deeming provisions of Section 48 (1) of the Act, the Commission finds the aforesaid five officials of NEI, Schaeffler, SKF and Tata Bearing liable for the acts of contravention committed by their respective companies.



29. Further, the DG has identified the following persons of NEI, Schaeffler, SKF and Tata Bearing, to be liable in terms of the provisions of Section 48 (2) of the Act for their specific role in the contravention committed by their respective companies:

OP	Person	Designation
OP-2	Sanjeev Taparia	Senior VP (Marketing)
OP-3	Rajendra Anandpara	Managing Director
	Sarabjit Singh	VP (Sales and Marketing)
	Rajiv Ghai	Head of Highway Business
	Ajay Kabu	General Manager
OP-4	Lokesh Saxena	Former General Manager (Sales)
OP-5	Harsh Sachdev	Executive in-charge of Bearings Division
	Sanjeev Mohan	Chief of Marketing and Sales

30. With respect to the above persons, the Commission notes the following specific roles played by them:

OP	Person	Role
OP-2	Sanjeev Taparia	Mr. Taparia was responsible for price related decisions in OP-2; through in-person meeting with competitors held on 03.11.2009 and telephonic discussions held on 31.01.2011, Mr. Taparia agreed to seek co-ordinated price increase from OEM customers
OP-3	Rajendra Anandpara	Mr. Anandpara approved the cartel activities of Mr. Sarabjit Singh, who was a key person in-charge of pricing decisions in OP-3; Mr. Anandpara was the kingpin of the cartel in the domestic bearings market
	Sarabjit Singh	Mr. Singh organised the meetings of competitors on two occasions <i>i.e.</i> 03.11.2009 and 31.01.2011 and agreed to seek price increase from OEM customers in a concerted manner
	Rajiv Ghai	Mr. Ghai alongwith Mr. Sarabjit Singh participated in the meeting of competitors held on 31.01.2011 wherein agreement to seek co-ordinated price increase from OEMs was reached; Mr Ghai was also CC'd the e-mail dated 03.02.2011
	Ajay Kabu	Mr. Kabu was fully aware of the cartel activities of Mr. Sarabjit Singh and Mr. Rajiv Ghai; Mr. Kabu was also CC'd the e-mail dated 03.02.2011
OP-4	Lokesh Saxena	Mr. Saxena was in-charge of the Two-Wheeler and Electrical OEMs business in OP-3; Mr. Saxena participated in the meetings/discussions with competitors held on 03.11.2009 and 31.01.2011 and reached an agreement to seek price increase from OEM customers in a concerted manner



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OP	Person	Role
OP-5	Harsh Sachdev	Mr. Sachdev was responsible for the pricing decisions of Bearings Division; Mr. Sachdev participated in the meetings of competitors held on two occasions <i>i.e.</i> 03.11.2009 and 31.01.2011 wherein agreement to seek price increase from OEM customers in a concerted manner was reached
	Sanjeev Mohan	Mr. Mohan accompanied Mr. Harsh Sachdev in the meeting of competitors held on 31.01.2011

31. None of the above individuals have been able to rebut or deny before the Commission, the above specific roles played by them in the cartel for which the DG has cogent gathered evidences. Therefore, the Commission finds the aforesaid eight officials of NEI, Schaeffler, SKF and Tata Bearing liable in terms of the provisions of Section 48 (1) of the Act.

**Conclusion:**

32. In view of the above, the Commission holds NEI, Schaeffler, SKF and Tata Bearing guilty of contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act. Further, the Commission holds the following persons of NEI, Schaeffler, SKF and Tata Bearing liable in terms of Section 48 of the Act for the acts of contravention of the provisions of the Act committed by their respective companies:

OP	Person	Designation
OP-2	Sanjeev Taparia	Senior VP (Marketing)
	Rohit Saboo	President and CEO, 03.11.2009 to 31.03.2011
OP-3	Rajendra Anandpara	Managing Director
	Sarabjit Singh	VP (Sales and Marketing)
	Rajiv Ghai	Head of Highway Business
	Ajay Kabu	General Manager
OP-4	Lokesh Saxena	Former General Manager (Sales)
	Rakesh Makhija	Managing Director, 03.11.2009 to 30.11.2009
	Shishir Joshipura	Managing Director, 01.12.2009 to 31.03.2011
OP-5	Harsh Sachdev	Executive in-charge of Bearings Division
	Sanjeev Mohan	Chief of Marketing and Sales



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## ORDER

33. The Commission, in terms of Section 27 (a) of the Act, directs the Opposite Parties NEI, Schaeffler, SKF and Tata Bearing and their respective officials who have been held liable in terms of the provisions of Section 48 of the Act, to cease and desist in future from indulging in practices which have been found in the present order to be in contravention of the provisions of Section 3 of the Act, as detailed in the earlier part of the present order.
34. Regarding penalty, it is observed that in light of the peculiar facts and circumstances of the present case as detailed in this order, ends of justice would be met if the parties cease such cartel behaviour and desist from indulging in it in future, as directed earlier. The parties are however, cautioned to ensure that their future conduct is strictly in accord with the provisions of the Act, failing which any such future behaviour would be vied seriously with attendant consequences.
35. The Secretary is directed to inform all concerned, accordingly.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**Sd/-**  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**  
**Date: 05.06.2020**