

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of

INA-HOLDING SCHAEFFLER KG,
a corporation,

and

FAG KUGELFISCHER GEORG SCHÄFER AG,
a corporation.

Docket No. C-4033

**ORDER TO MAINTAIN
ASSETS**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of Respondent FAG Kugelfischer Georg Schäfer AG (“FAG”) by Respondent INA-Holding Schaeffler KG (“INA”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing the proposed Decision and Order and Order to Maintain Assets, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place the Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Proposed Respondent INA is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Industriestrasse 1-3, D-91072 Herzogenaurach, Germany.
2. Proposed Respondent FAG is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Georg-Schäfer-Straße 30, 97421 Schweinfurt, Germany.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “INA” means INA-Holding Schaeffler KG, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and joint ventures, subsidiaries, divisions, groups, and affiliates controlled by INA-Holding Schaeffler KG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “FAG” means FAG Kugelfischer Georg Schäfer AG, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and joint ventures, subsidiaries, divisions, groups, and affiliates controlled by FAG Kugelfischer Georg Schäfer AG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means INA and FAG.
- D. “Acquirer” means SKF or any other Person that acquires the Assets To Be Divested, and any Additional Assets To Be Divested, pursuant to the Decision & Order.

- E. “Additional Assets To Be Divested” means any FAG Machinery that the trustee elects to divest pursuant to Paragraph III.A. of the Decision & Order.
- F. “Assets To Be Divested” means all of the following:
1. The name, address, and telephone number of each Contact Person for each Customer of INA and each Customer of FAG;
 2. All of FAG’s rights, title, and interests in all Tools and Technical Drawings relating in any way to the research, development, manufacture, or quality assurance of Cartridge Ball Screw Support Bearings by FAG, regardless of whether such assets relate exclusively to such activities;
 3. All of FAG’s rights, title, and interests in all documents relating to the research, development, manufacture, quality assurance, marketing, customer support, or sale of Cartridge Ball Screw Support Bearings, regardless of whether such documents relate exclusively to such activities (but subject to Paragraph II.C.5. of the Decision & Order), including, but not limited to, books, records, files, marketing materials, advertising materials, training materials, product data, price lists, sales materials, marketing information, customer files, and promotional materials; and
 4. All of FAG’s rights, title, and interests in any assets, tangible and intangible, that are reasonably necessary for the Acquirer to engage in the research, development, manufacture, quality assurance, marketing, customer support, or sale of Cartridge Ball Screw Support Bearings in the same manner, and achieving the same quality and customer acceptance, as did FAG prior to the Divestiture Date, including, but not limited to, all rights, title and interests in inventions, technology, contractual rights, patents, patent applications, trade secrets, know-how, technical information, software, designs, and processes.
- G. “Cartridge Ball Screw Support Bearings” means self-retained, ready to mount, double-row axial angular contact ball screw support bearing units with integral seals and incorporating an outer ring, two inner rings, and ball cage assemblies, that are designed for use as an alternative to two single-row angular contact ball bearings, including but not limited to, all INA products with part numbers identified with a ZKLN or ZKLF prefix and all FAG products with part numbers identified with a DBSB or DBSBS prefix and a 2RS.T suffix.
- H. “Commission” means the Federal Trade Commission.
- I. “Consent Agreement” means the Agreement Containing Consent Orders in this matter.

- J. “Contact Person” means the Person or Persons at the Customer who has or have been, in the normal course of business, the person or persons to whom Respondents send information to or contact regarding Respondents’ Cartridge Ball Screw Support Bearings.
- K. “Customer” means any Person that has acquired a Cartridge Ball Screw Support Bearing manufactured by INA or FAG since January 1, 1999, including, but not limited to, distributors, original equipment manufacturers, and end-use customers.
- L. “Decision & Order” means the Decision and Order attached to the Consent Agreement.
- M. “Divestiture Agreement” means the SKF Divestiture Agreement or any other agreement or agreements pursuant to which Respondents, or a trustee, divest the Assets To Be Divested pursuant to the Decision & Order.
- N. “Divestiture Date” means the date on which the Respondents have fully completed the divestiture, pursuant to the Decision & Order, of the Assets To Be Divested, and any Additional Assets To Be Divested, to the Acquirer.
- O. “FAG Machinery” means all tangible assets, other than real estate, used by FAG at any time prior to the Divestiture Date in the manufacture of Cartridge Ball Screw Support Bearings, regardless of whether such assets relate exclusively to such manufacture.
- P. “Person” means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.
- Q. “Relevant Orders and Agreements” means this Order to Maintain Assets, the Consent Agreement, the Decision & Order, the SKF Divestiture Agreement, and any other Divestiture Agreement.
- R. “Technical Drawings” means any precise drawing.
- S. “Tools” means fixtures that are fastened to a machine tool, and that make contact with the part being produced in order to achieve the desired geometry of such part.

II.

IT IS FURTHER ORDERED that, until the Divestiture Date, Respondents shall:

- A. Maintain the Assets To Be Divested and the FAG Machinery in substantially the same condition (except for normal wear and tear) existing at the time Respondents sign the Consent Agreement, and take such action that is consistent with the past practices of Respondents in connection with

the Assets To Be Divested and FAG Machinery and is taken in the ordinary course of the normal day-to-day operations of Respondents;

- B. Maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents, and others having relationships with the business of the Assets To Be Divested and the FAG Machinery;
- C. Provide all employees of FAG who have responsibilities relating to the Assets To Be Divested or the FAG Machinery with reasonable financial incentives to continue in their positions until the Divestiture Date, including, but not limited to, a continuation of all employee benefits offered by Respondents as of December 1, 2001; and
- D. Preserve the Assets To Be Divested and the FAG Machinery intact as an on-going business and not take any affirmative action, or fail to take any action within their control, as a result of which the viability, competitiveness, or marketability of the Assets To Be Divested or the FAG Machinery would be diminished.

III.

IT IS FURTHER ORDERED that:

- A. At any time after the Commission issues this Order to Maintain Assets, the Commission may appoint one or more Monitors to assure that Respondents expeditiously comply with their obligations under the Relevant Orders and Agreements.
- B. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities and responsibilities of any Monitor appointed pursuant to Paragraph III.A.:
 - 1. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Monitor within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
 - 2. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of the Relevant Orders and Agreements.
 - 3. Within ten (10) days after appointment of the Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the

rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the terms of the Relevant Orders and Agreements.

4. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Relevant Orders and Agreements.
5. The Monitor shall have full and complete access, subject to any legally recognized privilege of Respondents, to Respondents' personnel, books, records, documents, facilities and technical information relating to any of the Assets To Be Divested or FAG Machinery, or to any other relevant information, as the Monitor may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Assets To Be Divested or FAG Machinery. Respondents shall cooperate with any reasonable request of the Monitor. Respondents shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Relevant Orders and Agreements.
6. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
7. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
8. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in Paragraph III.A. of this Order to Maintain Assets.
9. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Relevant Orders and Agreements.
10. The Monitor shall report in writing to the Commission concerning compliance by Respondents with the provisions of the Relevant Orders and Agreements within twenty (20) days from the date of appointment and every thirty (30) days thereafter until the end of his term.

11. Respondents may require the Monitor to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Monitor from providing any information to the Commission.
12. Any Monitor appointed pursuant to Paragraph III.A. of this Order to Maintain Assets may be the same Person appointed as trustee pursuant to Paragraph III.A. of the Decision & Order.

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with the Relevant Orders and Agreements; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. Thirty (30) days after Respondents have fully:

1. completed the divestiture, pursuant to the Decision & Order, of the Assets To Be Divested, and any Additional Assets To Be Divested, to the Acquirer; and
2. complied with Paragraphs II.C.4. and II.C.6. of the Decision & Order.

By the Commission, Chairman Muris not participating.

Donald S. Clark
Secretary

SEAL

ISSUED: December 20, 2001