

**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-

DECISION AND ORDER

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 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 had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue

stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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

IV.

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 this Order.

- E. “Acquisition Date” means the date, if any, on which INA acquires any voting securities or assets of FAG in addition to those held as of December 1, 2001.
- F. “Additional Assets To Be Divested” means any FAG Machinery that the trustee elects to divest pursuant to Paragraph III.A. of this Order.
- G. “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 this 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.
- H. “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.
- I. “Commission” means the Federal Trade Commission.

- 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. “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, and any Additional Assets To Be Divested, pursuant to this Order.
- M. “Divestiture Date” means the date on which the Respondents have fully completed the divestiture, pursuant to this Order, of the Assets To Be Divested and any Additional Assets To Be Divested, to the Acquirer.
- N. “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.
- O. “NTN” means NTN Corporation, a Japanese corporation with its principal place of business located at 3-17, 1 Chome, Kyomachibori, Nishi-ku, Osaka 550-0003, Japan; and joint ventures, subsidiaries, divisions, groups, and affiliates controlled by NTN Corporation.
- P. “Person” means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.
- Q. “SKF” means SKF Österreich AG, an Austrian corporation which has its principal place of business at Seitenstettner Strasse 15, AT - 4400 Stey, Austria, and which is a wholly-owned subsidiary of Aktiebolaget SKF, a Swedish corporation with its principal place of business located at Hornsgatan 1, Goteborg, Sweden.
- R. “SKF Divestiture Agreement” means the Sales and Transfer Agreement dated December 13, 2001, that is attached as Confidential Appendix A to this Order.
- S. “Technical Drawings” means any precise drawing.
- T. “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.

V.

IT IS FURTHER ORDERED that:

- A. No later than twenty (20) business days after the Acquisition Date, Respondents shall divest to SKF, absolutely, and in good faith, at no minimum price, the Assets To Be Divested as an on-going business. The SKF Divestiture Agreement shall be incorporated into this Order and made a part hereof, and shall not be construed to vary from or contradict the terms of this Order. Any failure to comply with the terms of the SKF Divestiture Agreement shall constitute a violation of this Order. PROVIDED, HOWEVER, if, at the time the Commission makes the Order final, the Commission determines that SKF is not an acceptable acquirer or that the SKF Divestiture Agreement is not an acceptable manner of divestiture, Respondents shall, within three (3) months of the date Respondents receive notice of such determination from the Commission, divest the Assets To Be Divested absolutely and in good faith, at no minimum price, as an on-going business, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- B. If Respondents have divested the Assets To Be Divested to SKF prior to the date this Order becomes final, and if, at the time the Commission makes the Order final, the Commission determines that SKF is not an acceptable acquirer or that the SKF Divestiture Agreement is not an acceptable manner of divestiture, and so notifies Respondents, then Respondents shall, within three (3) business days of receiving such notification, rescind the transaction with SKF, and shall divest the Assets To Be Divested in accordance with the proviso to Paragraph II.A. of this Order.
- C. Respondents shall divest the Assets To Be Divested and any Additional Assets To Be Divested on the following terms, in addition to others that may be required by this Order and by the Divestiture Agreement, and shall agree with the Acquirer to do the following:
 1. Respondents shall place no restrictions on the use by the Acquirer of the Assets To Be Divested and of any Additional Assets To Be Divested.
 2. Respondents shall waive any claim that any tangible or intangible asset of FAG relating to the research, development, manufacture, or quality assurance of Cartridge Ball Screw Support Bearings infringes in any way on any right of INA, and shall not make any such claim against the Acquirer.
 3. For a period of at least ten (10) years following the Divestiture Date, Respondents shall maintain the confidentiality of all proprietary business information conveyed to the Acquirer pursuant to this Order.

4. Respondents shall provide to the Acquirer, at no additional cost, for a period of up to six (6) months after the Divestiture Date, such personnel, assistance, and training as the Acquirer might reasonably request in order 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.
5. Notwithstanding any other provision of Paragraphs II. and III., Respondents may redact from assets identified in Paragraph I.G.3. of this Order, and conveyed to the Acquirer, any information that does not relate to the research, development, manufacture, quality assurance, marketing, customer support, or sale of Cartridge Ball Screw Support Bearings.
6. Upon the request of the Acquirer, for a period of up to six (6) months after the Divestiture Date, Respondents shall manufacture, and deliver to the Acquirer, Cartridge Ball Screw Support Bearings in sufficient quantities to satisfy the reasonable requirements of customers of the Assets To Be Divested; provided that the Acquirer makes available to Respondents any Tools acquired from Respondents that are necessary for such manufacture. Such manufacture and sale of Cartridge Ball Screw Support Bearings shall be on the following terms and conditions:
 - a. The price to the Acquirer of such Cartridge Ball Screw Support Bearings shall not exceed Respondents' variable cost.
 - b. Respondents shall make representations and warranties that the Cartridge Ball Screw Support Bearings supplied (i) meet all applicable product specifications and (ii) are merchantable so as to pass without objection in the trade under the product description. Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses resulting from the failure of the products supplied by Respondents to the Acquirer to comply with such representations and warranties. This obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondents to the Acquirer. Respondents shall make representations and warranties that Respondents will hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver Cartridge Ball Screw Support Bearings in a timely manner unless Respondents can demonstrate that such failure was entirely beyond the control of Respondents and was in no part the result of negligence or willful misconduct on Respondents' part.

- D. After the Divestiture Date, Respondents shall not use, in the sale of Cartridge Ball Screw Support Bearings, any catalog numbers used at any time prior to the Divestiture Date by FAG to identify Cartridge Ball Screw Support Bearings manufactured by FAG.
- E. The purpose of Paragraphs II. and III. of this Order is to ensure the continuation of the Assets To Be Divested and any Additional Assets To Be Divested as, or as part of, an on-going viable enterprise engaged in the same business in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition alleged in the Commission's Complaint.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within the time and in the manner required by Paragraph II. of this Order, the Commission may appoint a trustee to divest those assets; provided, however, that the trustee may also divest, in addition to the Assets To Be Divested, any FAG Machinery that the trustee may elect to divest, subject to the approval of the Commission. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested and the FAG Machinery.
3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the period for no more than two (2) additional periods of twelve (12) months each.
5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested and the FAG Machinery or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made only in a manner that receives the prior approval of the Commission, and only to an acquirer that receives the prior approval of the Commission. Provided, however, if the trustee receives bona fide offers for the Assets To Be Divested, and any Additional Assets To Be Divested, from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such assets to the acquiring entity selected by INA from among those approved by the Commission; provided further, however, that INA shall select such entity within five (5) days of receiving notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers,

appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested any Additional Assets To Be Divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
11. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested or the FAG Machinery.
12. The trustee shall report in writing to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture required by this Order.
13. Respondents may require the trustee to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the trustee from providing any information to the Commission.
14. Any trustee appointed pursuant to Paragraph III.A. of this Order may be the same Person appointed as Monitor pursuant to Paragraph III.A. of the Order to Maintain Assets.

VII.

IT IS FURTHER ORDERED, that for a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not, without providing advance written notification to the Commission:

- A. acquire, directly or indirectly, through subsidiaries or otherwise, any ownership, leasehold, or other interest, in whole or in part, in any of the assets divested pursuant to Paragraph II. or III. of this Order; or
- B. enter into any collaboration, joint venture or other such arrangement with NTN related to any product sold or service provided by INA or FAG in North America at any time within two years prior to entering the collaboration, joint venture or other such arrangement with NTN.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission’s Bureau of Competition. **PROVIDED, HOWEVER,** that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VIII.

IT IS FURTHER ORDERED that within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until they have fully complied with their obligations under Paragraphs II.A., II.B. and III. of this Order, each Respondent shall submit to the Commission, and to any Monitor appointed pursuant to Paragraph III.A. of the Order to Maintain Assets, a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and III. of this Order and with the Order to Maintain Assets. Respondents shall include in such compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written

communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

IX.

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.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, upon written request, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, employees, agents or independent contractors of Respondents, who may have counsel present, relating to any matters contained in this Order.

XI.

IT IS FURTHER ORDERED that this Order will terminate twenty (20) years after the date it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED:

CONFIDENTIAL

APPENDIX A

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