

Locust Street, St. Louis, Missouri  
63166–2034:

1. *Hardin County Bancorp, Inc.*, Rosiclare, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Rosiclare, Rosiclare, Illinois.

Board of Governors of the Federal Reserve System, December 20, 2001.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 01–31875 Filed 12–27–01; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL TRADE COMMISSION

### Remedial Use of Disgorgement

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Notice; request for comments.

**SUMMARY:** The Commission is requesting comments on the use of disgorgement as a remedy for violations of the Hart-Scott-Rodino (HSR) Act, FTC Act and Clayton Act.

**DATES:** Comments must be received by March 1, 2002.

**ADDRESSES:** Public comments are invited, and may be filed with the Commission in either paper or electronic form. An original and one (1) copy of any comments filed in paper form should be submitted to the Document Processing Section, Office of the Secretary, Room 159–H, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled “confidential.” Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: [disgorgementcomment@ftc.gov](mailto:disgorgementcomment@ftc.gov).

**FOR FURTHER INFORMATION CONTACT:** John Graubert, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2186, [jgraubert@ftc.gov](mailto:jgraubert@ftc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission has considerable experience with the use of monetary equitable remedies in consumer protection cases. In contrast, the Commission has considered disgorgement or other forms of monetary equitable relief in fewer competition matters and obtained disgorgement in two recent matters, *FTC v. Mylan Laboratories, et al.* and *FTC v. The Hearst Trust et al.* The Commission

accordingly solicits comments on the factors the Commission should consider in applying this remedy and how disgorgement should be calculated. The Commission is not re-examining its statutory authority to seek disgorgement or other monetary equitable relief in competition cases.

Comments may address any or all of the following questions. However, other, related comments are also welcome:

1. Are there particular violations of the Clayton Act, the HSR Act, the competition provisions of the FTC Act, or final orders of the Commission in competition cases where disgorgement would be especially appropriate or, in contrast, less useful? Should the resort to disgorgement depend on whether, in conjunction with an HSR Act violation or order violation, the underlying transaction or conduct constitutes an illegal acquisition under section 7 of the Clayton Act, or constitutes monopolization or attempted monopolization under section 5 of the Federal Trade Commission Act?

2. How should the Commission calculate the amount of disgorgement appropriate for particular law violations under each of the statutes? For example, if the Commission sought disgorgement for violations of the HSR Act, how should disgorgement be calculated when the unlawful gain includes (or consists solely of) tax savings, stock market profits, or other gain not directly related to antitrust injury? Should disgorgement be calculated to remove all profits earned from the acquisition, all profits attributable to antitrust harm, or some other approach? How should the Commission assess benefits obtained in an unlawful acquisition, or other transaction, that do not flow directly from immediate injury to customers, *e.g.*, where the violator reduces its investments in future technology because of a reduction in the competition it faces? Is the approach used to calculate disgorgement in *S.E.C. v. First City Financial Corporation, Ltd.*, 890 F.2d 1215 (D.C. Cir. 1989), appropriate for the Commission’s use?

3. What other factors should the Commission consider in determining whether to seek disgorgement? How should the Commission weight and what is the relevance to the Commission of the following factors in determining whether to seek disgorgement: (i) The impact that seeking such a remedy may have on other aspects of any settlement negotiations, *e.g.*, delay in obtaining divestiture or other structural relief; (ii) the adequacy of other forms of relief (including civil penalties); (iii) the egregiousness of the conduct at issue; (iv) the extent of harm to the market

generally or to indirect purchasers who may be unable to pursue a claim; (v) the ability of an affected party to secure relief independently of the Commission, *e.g.*, by private actions; (vi) the advantages or disadvantages of litigation in federal court rather than in an administrative proceeding; and (vii) the possible tradeoff between addressing past harm more thoroughly (through disgorgement) and an interest in obtaining relief quickly (through a conduct or structural remedy) so as to limit the effects of a continuing violation?

4. Should pending or potential private litigation, actions by state attorneys general, or civil or criminal prosecution by the Antitrust Division of the Department of Justice, affect the Commission’s decision to seek disgorgement? Is this decision any different from the Commission’s decision to seek other equitable relief, *e.g.*, divestiture, in cases where other related private or public litigation exists or its possible? Will Commission disgorgement claims encourage or discourage the decision of private parties or states to bring or continue litigation, or settlement negotiations, in such cases? If so, what would the ultimate effect on consumer welfare be under each such scenario?

5. In light of the fact that disgorgement and restitution have distinct theoretical underpinnings and equitable rationales, are there circumstances in competition cases in which one or the other of these remedies is more appropriate? What are the considerations that should inform such decisions?

6. When and how should disgorgement funds recovered by the Commission be distributed as restitution when there is parallel private litigation? For example, should any recovery of disgorgement or restitution by the Commission affect the calculation of or be used to pay attorney’s fees in parallel litigation, and, if so, in what way? In any restitution program, how should direct and indirect purchasers be treated? How should the Commission proceed if its own action and parallel private action are not consolidated before a single judge?

The Commission is also interested in learning about parties’ experiences in analogous circumstances involving disgorgement with other federal or state agencies and in other enforcement areas.

By direction of the Commission.

Dated: December 19, 2001.

**Donald S. Clark,**

*Secretary.*

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BILLING CODE 6750-01-M

## FEDERAL TRADE COMMISSION

[File No. 021 0002]

### INA-Holding Schaeffler KG, et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

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

**DATES:** Comments must be received on or before January 22, 2002.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov), as prescribed below.

**FOR FURTHER INFORMATION CONTACT:** Nick Koberstein, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2743.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 21, 2001), on the World Wide Web, at "<http://www.ftc.gov/os/2001/12/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580,

either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov). Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii).

### Analysis of Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from INA-Holding Schaeffler KG ("INA") and FAG Kugelfischer Georg Schäfer AG ("FAG"), which is designed to remedy the anticompetitive effects resulting from INA's acquisition of FAG. Under the terms of the Consent Agreement, INA and FAG will be required to divest FAG's cartridge ball screw support bearing ("CBSSB") business. FAG's CBSSB business will be divested to Aktiebolaget SKF ("SKF"), and will take place no later than twenty (20) business days from the date on which INA begins its acquisition of FAG.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order.

Pursuant to a cash tender offer announced on September 13, 2001, INA proposes to acquire all of the outstanding shares of FAG. The total value of the transaction is approximately \$650 million. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15

U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the worldwide market for the research, development, manufacture and sale of CBSSBs.

FAG and INA are the only two suppliers of CBSSBs in the world. CBSSBs are critical components in many industrial machine tools, and are utilized by machine tool original equipment manufacturers ("OEMs") around the world. Machine tools are machines that are used in the production of other equipment, and include grinding machines, milling machines, and laser drilling and cutting systems. Machine tool OEMs utilize CBSSBs to reduce the friction associated with the rotation of a rolling screw. This rotation is used to control linear motion for accurate positioning, and is vital to the proper functioning of certain machine tools. Although other types of bearings can be used to accomplish this purpose, CBSSBs are easier, less expensive, and less time intensive to use than the potential alternatives. CBSSBs also allow end users of machine tools to replace the bearings easily, quickly and without incurring substantial cost. Moreover, once a machine tool is designed with CBSSBs, the process of switching to an alternative type of bearing would require a costly and time consuming redesign of the tool. For these reasons, it is highly unlikely that OEMs, or end users, would switch from CBSSBs to alternative technologies even if CBSSB prices increased significantly.

The global market for CBSSBs is highly concentrated. If the proposed acquisition is consummated, the combined firm would monopolize the worldwide market for CBSSBs. Prior to the acquisition, INA and FAG frequently competed against each other for CBSSB business, and this competition benefitted CBSSB customers. By eliminating competition between the two competitors in this highly concentrated market, the proposed acquisition would allow the combined firm to exercise market power unilaterally, thereby increasing the likelihood that purchasers of CBSSBs would be forced to pay higher prices and that innovation, service levels, and product quality in this market would decrease.

There are significant impediments to new entry into the CBSSB market. A new entrant into the CBSSB market would need to undertake the difficult, expensive and time-consuming process of researching and developing a line of CBSSB products, acquiring the necessary production assets, and developing the expertise needed to