

Complaint

IN THE MATTER OF

INA-HOLDING SCHAEFFLER KG, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket C-4071; File No. 0210002

Complaint, December 20, 2001--Decision, February 5, 2002

This consent order addresses the acquisition by Respondent INA-Holding Schaeffler KG (“INA”) of Respondent FAG Kugelfischer Georg Schäfer AG (“FAG”); the two firms are the only two suppliers in the world of cartridge ball screw support bearings, which are used in machine tools such as grinding machines, milling machines, and laser drilling and cutting systems to reduce the friction associated with the rotation of a rolling screw, which is used in turn to control linear motion for accurate positioning. The consent order, among other things, requires the respondents to divest FAG’s cartridge ball screw support bearings business – including specialized tooling equipment, technical drawings, advertising and training materials, customer lists, and other assets used in the research, development, manufacturing, quality assurance, marketing, customer support and sale of the bearings – to Aktiebolaget SKF. The order also requires the respondents, for six months, to provide SKF with personnel, assistance, and training, and transitional manufacturing services. In addition, the order requires the respondents to provide the Commission with prior notice before entering into any joint venture activities with NTN Corporation of Japan affecting North America.

Participants

For the Commission: *Nicholas R. Koberstein, Sean G. Dillon, Jeffrey H. Perry, Ann Malester, Rendell A. Davis, Jr., Daniel P. Ducore, Roy Levy, Leslie Farber and Mary T. Coleman.*

For the Respondents: *Wayne D. Collins, Shearman & Sterling, Christopher Smith and Eugene J. Meigher, Arent, Fox, Kintner, Plotkin & Kahn PLLC, and Michael L. Weiner and Jill A. Ross, Skadden, Arps, Slate, Meagher and Flom LLP.*

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COMPLAINT

Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondents INA-Holding Schaeffler KG (“INA”), a corporation, and FAG Kugelfischer Georg Schäfer AG (“FAG”), a corporation, both subject to the jurisdiction of the Commission, have entered into an agreement whereby INA would acquire all of the issued and outstanding securities and convertible debentures of FAG in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. 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. INA’s principal subsidiary in the United States is located at 308 Springhill Farm Road, Fort Mill, South Carolina 29715.
2. 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. FAG’s principal subsidiary in the United States, Barden Corporation, is located at 200 Park Avenue, P.O. Box 2449, Danbury, Connecticut 06813.
3. Respondents INA and FAG are engaged in, among other things, the research, development, manufacture and sale of ball and roller bearings, including, but not limited to, cartridge ball screw support bearings (“CBSSBs”).

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4. Respondents are, and at all times herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are corporations whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

5. On or about September 13, 2001, INA announced a cash tender offer to acquire all of the issued and outstanding shares of FAG (“Acquisition”). On or about October 15, 2001, FAG announced that it had reached a legally binding agreement with INA regarding the pricing of the Acquisition and the management of the combined firm (“Agreement”). Under the terms of the Agreement, the Acquisition is valued at approximately \$650 million.

III. THE RELEVANT MARKET

6. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture and sale of CBSSBs. CBSSBs are a type of bearing used in the manufacturing of machine tool equipment. CBSSBs are sold both to original equipment manufacturers as well as after-market customers for replacement purposes.

7. For the purposes of this Complaint, the world is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

IV. THE STRUCTURE OF THE MARKET

8. INA and FAG are the only two suppliers of CBSSBs in the world. Thus, the market for the research, development, manufacture and sale of CBSSBs is extremely highly concentrated, as measured by the Herfindahl-Hirschman Index.

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The proposed acquisition, if consummated, would result in a monopoly in the relevant market.

V. ENTRY CONDITIONS

9. Entry into the research, development, manufacture and sale of CBSSBs is a difficult process because of, among other things, the time and cost associated with researching and developing a line of CBSSB products, acquiring the necessary production assets, and developing the expertise needed to successfully design, produce, and market these products.

10. New entry into the relevant market for CBSSBs is not likely to occur to deter or counteract the adverse competitive effects described in Paragraph 12 because the costs of entering the market and producing CBSSBs are high relative to the potential sales opportunities available to an entrant.

11. New entry into the relevant market for CBSSBs would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 12 because it would take over two years for an entrant to accomplish the steps required for entry and achieve a significant market impact.

VI. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between INA and FAG in the relevant market;

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- b. by creating a monopoly in the relevant market, thereby substantially increasing the likelihood that INA will unilaterally exercise market power in the relevant market;
- c. by reducing current incentives to improve service or product quality, or pursue further innovation in the relevant market; and
- d. by increasing the likelihood that customers of CBSSBs would be forced to pay higher prices.

VII. VIOLATIONS CHARGED

13. The Agreement constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

14. The Acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twentieth day of December, 2001, issues its Complaint against said Respondents.

By the Commission, Chairman Muris not participating.

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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”):

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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.

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- 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

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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

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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.

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- 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.

II.

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.

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- 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,

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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

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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.

III.

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(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the

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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.

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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

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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.

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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.

IV.

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

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- 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 of 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.

V.

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

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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.

VI.

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.

VII.

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

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- 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.

VIII.

IT IS FURTHER ORDERED that this Order will terminate on February 5, 2022.

By the Commission, Chairman Muris not participating.

CONFIDENTIAL

APPENDIX A

[Redacted From Public Record Version]

Order

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

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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.

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- 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

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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

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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

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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.:

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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.

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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.

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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

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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.

Analysis

**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

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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 successfully design, manufacture, and market these products. It would take a new entrant over two years to accomplish these steps and achieve a significant market impact. Additionally, new entry into the CBSSB market is unlikely to

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occur because the costs of entering the market and producing CBSSBs are high relative to the limited sales opportunities available to new entrants.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the worldwide market for CBSSBs by requiring INA and FAG to divest FAG's CBSSB business. This business consists of, among other things, FAG's specialized tooling equipment, technical drawings, advertising and training materials, customer lists, and other assets used in the research, development, manufacturing, quality assurance, marketing, customer support and sale of CBSSBs (collectively "CBSSB Assets"). Pursuant to the Consent Agreement, INA and FAG are required to divest the CBSSB Assets to SKF within twenty (20) business days from the date on which INA begins its acquisition of FAG. If the Commission determines that SKF is not an acceptable buyer or that the manner of the divestiture is not acceptable, INA and FAG must rescind the sale to SKF within three (3) business days, and divest the CBSSB Assets to a Commission-approved buyer within three (3) months. If INA and FAG have not divested the CBSSB Assets within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets and any additional FAG machinery that the trustee deems appropriate, subject to Commission approval.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems. The Commission is satisfied that SKF is a well-qualified acquirer of the divested assets. SKF is a publicly-traded Swedish corporation and the largest supplier of ball and roller bearings worldwide. SKF has been active in the bearings industry since 1907, and currently has production sites in 22 countries around the world and sales activities in almost every country in the world. SKF is also a current producer of ball screw support bearings, the product from which CBSSBs were originally derived. Thus, SKF has the necessary industry expertise to manufacture and sell CBSSBs, and

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its entry into the CBSSB market will effectively replace the competition being eliminated by INA's acquisition of FAG. Furthermore, SKF does not pose separate competitive issues as the acquirer of the divested assets.

The Consent Agreement includes a number of provisions that are designed to ensure that the divestiture of the CBSSB Assets is successful. The Consent Agreement requires that, for a period of six (6) months, INA and FAG provide SKF with personnel, assistance, and training at no cost to SKF. This provision will ensure that SKF is able to effectively manufacture and market CBSSBs of the same quality as those currently produced by FAG. Additionally, if requested by SKF, INA and FAG are required to provide transitional manufacturing services at variable cost to SKF for up to six (6) months. This will ensure that SKF is able to serve customers in the CBSSB market without delay. In order to further facilitate SKF's entry into the CBSSB market, the Consent Agreement also prohibits INA and FAG from using any catalog numbers currently used by FAG to identify its CBSSBs.

To preserve the competitive viability and independence of the CBSSB Assets pending divestiture, the Consent Agreement includes an Order to Maintain Assets. This Order contains a number of provisions designed to ensure that the viability, competitiveness, and marketability of the CBSSB Assets and other FAG machinery are not diminished. The Order to Maintain Assets also provides that the Commission may appoint one or more monitors to ensure that INA and FAG expeditiously comply with their obligations under the Consent Agreement.

In order to ensure that the Commission remains informed about the status of the pending divestiture, and about efforts being made to accomplish the divestiture, the Consent Agreement requires INA and FAG to file an initial status report with the Commission within ten (10) days of the date the Consent Agreement is executed, and additional reports every thirty (30) days thereafter until the Commission's Decision and Order becomes final. Once the Commission's Order becomes final, INA and FAG have sixty (60) days within which to submit a verified written report

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detailing the manner in which they have complied, or intend to comply, with the Commission's Order. This reporting requirement continues until INA and FAG have fully complied with the Commission's Order.

In addition to the divestiture outlined above, the Commission's Order also addresses potential competitive issues raised by a possible future joint venture between FAG and NTN Corporation of Japan ("NTN"), another large producer of bearings worldwide. Although no joint activities have taken place to date, a preliminary agreement between FAG and NTN indicates that a wide range of possible joint marketing, joint production and joint sales activities are contemplated by the joint venture between the two companies. INA has publicly asserted that it welcomes the alliance with NTN and is prepared to continue this cooperation with NTN after INA's acquisition of FAG. Given that this scenario creates the possibility of a future global three-firm alliance, and given that such joint venture activities may not otherwise trigger Hart-Scott-Rodino reporting requirements, the Commission's Order requires INA and FAG to provide prior notice to the Commission before entering into any such joint venture activities with NTN affecting North America. This requirement will give the Commission an opportunity to review such activities for potential competitive harm before they take place.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

Complaint

IN THE MATTER OF

VALERO ENERGY CORPORATION, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-4031; File No. 0110141**Complaint, December 18, 2001--Decision, February 19, 2002*

This consent order addresses the merger of Respondent Valero Energy Corporation – a company engaged in national refining, transportation, and marketing of petroleum products and related petrochemical products, headquartered in San Antonio, Texas – with Respondent Ultramar Diamond Shamrock Corporation, a company engaged in the refining, marketing and transportation of petroleum products and petrochemicals and also headquartered in San Antonio. The order, among other things, requires the respondents to divest the Ultramar Golden Eagle refinery located in Avon, California – which can refine California Air Resources Board gasoline – bulk gasoline supply contracts, and 70 Ultramar-owned and operated Northern California retail service stations to an acquirer approved by the Commission. An accompanying Order to Hold Separate requires the respondents to hold separate and maintain certain assets pending their divestiture.

Participants

For the Commission: *Peter Richman, Frank Lipson, Art Nolan, Marc W. Schneider, Connie Salemi, Shai Littlejohn, Matthew Stratton, Jordan Coyle, Robert Walters, Valicia Spriggs, Catharine M. Moscatelli, Naomi Licker, Elizabeth A. Piotrowski, Phillip L. Broyles, Daniel P. Ducore, Susan Creighton, David W. Meyer, Louis Silvia and Mary T. Coleman.*

For the Respondents: *David Neill, Wachtell, Lipton, Rosen & Katz, and Phillip Proger and Peter J. Love, Jones, Day, Reavis & Pogue.*