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COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 07 (02) of 2014

In Re: Cartelisation in the supply of Bearings (Automotive and Industrial)

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

Present:

For NSK Ltd., Japan, NSK International (Singapore) Pte. Ltd. (formerly known as NSK ASEAN and OCEANIA Pte. Ltd.), NSK Bearings India Pvt Ltd. (formerly known as NSK India Sales Company Pvt Ltd.), [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] and [REDACTED]

Mr. Rajshekhar Rao, Senior Advocate with Ms. Nisha Kaur Uberoi and Ms. Radhika Seth, Advocates and Mr. Hiroya Matsushita, General Counsel, NSK Ltd.

For JTEKT Corporation, Japan, Koyo Bearings India Limited, [REDACTED]

[REDACTED]
[REDACTED] and [REDACTED]
[REDACTED]

Mr. Samir Gandhi, Ms. Aditi Gopalakrishnan and Mr. Karan Sood, Advocates

For NTN Corporation, Japan, [REDACTED]

[REDACTED]
[REDACTED] and [REDACTED]
[REDACTED]

Mr. Vaibhav Gaggar, Ms. Monica Lakhnarpal, Ms. Kokila Kumar and Mr. Rohan Khatana, Advocates



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ORDER

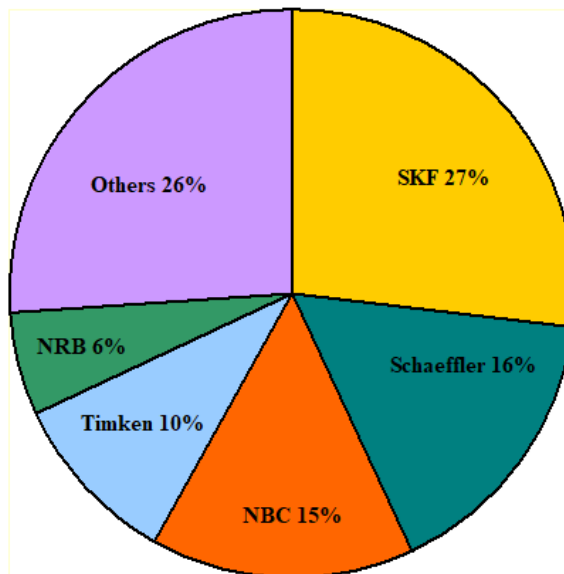
Background:

1. The present case pertains to alleged anti-competitive conduct in the Bearings (Automotive and Industrial) market by various Bearings manufacturers including, *inter alia*, NSK Ltd., Japan, NSK International (Singapore) Pte. Ltd. (formerly known as NSK ASEAN and OCEANIA Pte. Ltd.) and NSK Bearings India Pvt Ltd. (formerly known as NSK India Sales Company Pvt Ltd.) ('**NSK**'); JTEKT Corporation, Japan, and Koyo Bearings India Limited ('**JTEKT**'); and NTN Corporation, Japan ('**NTN**').
2. A Bearing is a machine element that constrains relative motion to only the desired motion and reduces friction between moving parts. There are several types of Bearings, each used for different purposes. These include Ball Bearings, Roller Bearings, Ball Thrust Bearings, Roller Thrust Bearings and Tapered Roller Thrust Bearings.
3. Almost the entire range of Bearings used in vehicles are called Automotive Bearings. There are three main categories of applications of Automotive Bearings: (i) Chassis Bearings (e.g., Bearings for Steering Columns, Suspension Arms and Links and Wheel Hub Bearings), (ii) Drivetrain Bearings (e.g. Automatic and Manual Transmission Systems), and (iii) Engine and Engine Accessories Bearings (e.g., Bearings for Chain and Belt Drive Bearings, Alternators and Water Pumps). The most valuable Automotive Bearings are Hub Bearings. Hub Unit Bearings are typically attached to the suspension system and support the heels of a vehicle. They are found on each axle and have to withstand the forward propulsion, turning, suspension movement and stopping of the vehicle. Automotive Bearings are usually customer-specific products specifically designed or adopted for a particular vehicle, platform or application. Contracts between Bearings manufacturers and Automotive Original Equipment Manufacturers ('**OEMs**') are for the lifespan of the vehicle, which is generally five years, and Bearings manufacturers have to make specific investments for a supply contract, which is generally not the case in Industrial applications.



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4. With the exception of Hub Bearings, all the different types of Bearings are also used for Industrial applications, including Bearings for vacuum cleaners, washing machines, bullet trains, aeroplanes, mining and construction equipment, machine tools, steelmaking equipment, wind turbines, chemical plants, etc.
5. As per the ICRA Report on Indian Bearings Industry 2017, the global Bearings industry size was estimated at USD 70 billion in the calendar year 2016. The Indian Bearings industry accounts for less than 5% of the global Bearings market. The Industrial segment accounts for about 52% of the domestic Bearing demand, and the share of automotive segment is at 48%. 60% of the requirement for consumption in India is catered through domestic production while the remaining requirement is met through imports. The major players in the global Bearings industry are multinational companies like AB SKF (Sweden), Schaeffler Group (Germany), Timken Company (USA) and Japanese companies such as NSK, NTN and JTEKT. The market share break-up of the key players in the domestic Bearing market is as below:



6. In the present case, the Commission has inquired into allegations of cartelisation among Bearings manufacturers from 2000 to 25.07.2011, in relation to the supply of Bearings to various Automotive and Industrial OEMs. The said inquiry has covered the period till 25.07.2011 only because, on 26.07.2011, another competition authority, namely the Japanese Fair Trade Commission ('JFTC') had conducted an onsite inspection of four



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Japanese companies, viz., NSK, JTEKT, NTN and Nachi-Fujikoshi Corporation, in connection with the alleged cartel.

Facts:

7. The case was initiated on the basis of an application received by the Commission under the provisions of Section 46 of the Competition Act, 2002 (the ‘Act’) read with the Competition Commission of India (Lesser Penalty) Regulations, 2009 (‘LPR’), from NSK. Based on the same, the Commission, forming an opinion that a *prima facie* case of contravention of the provisions of Section 3(3)(a) and Section 3(3)(d) read with Section 3(1) of the Act is made out, passed an order on 17.09.2014 under Section 26(1) of the Act and directed the Director General (‘DG’) to cause an investigation into the matter. During the pendency of investigation before the DG, JTEKT also approached the Commission by filing an application under the provisions of Section 46 of the Act read with the LPR.

Investigation by tshe DG:

8. The DG, after causing an investigation, submitted the investigation report finding contravention of the provisions of Section 3(3)(a) and 3(3)(d) read with Sections 3(1) and 32 of the Act by three Bearings manufacturers, i.e., NSK, JTEKT and NTN, with respect to the Request for Information (‘RFI’) issued by [REDACTED] (‘[REDACTED]’), in [REDACTED], to NSK, JTEKT, NTN and other suppliers for procurement of Hub 1 (Front Wheel) and Hub 3 (Rear Wheel) Bearings for its upcoming model, [REDACTED], which envisaged the production of [REDACTED] at various countries, including India, from [REDACTED].
9. Thereafter, upon directions from the Commission in this regard *vide* order dated 21.02.2019, the DG also submitted the supplementary investigation report, wherein contravention of the provisions of Section 3(3)(a) and 3(3)(d) read with Sections 3(1) and 32 of the Act by NSK, JTEKT and NTN was found with respect to the RFQs for Hub Bearings for [REDACTED] (‘[REDACTED]’) [REDACTED] platform, [REDACTED], issued by [REDACTED] (‘[REDACTED]’) in [REDACTED] to JTEKT, NSK, NTN and SKF.



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10. *Vide* order dated 29.08.2019, the non-confidential *qua* parties' versions of the investigation report and supplementary investigation report were forwarded to NSK, JTEKT and NTN and their persons concerned who were found by the DG to be liable in terms of the provisions of Section 48 of the Act (the '**Parties**'). They were given an opportunity to file their objections/suggestions, if any, to the reports of the DG and directed to file their certain financial statements.
11. Lastly, the DG, upon the directions of the Commission in this regard, *vide* order dated 28.01.2020, submitted the report on cross-examination, which was forwarded to the parties *vide* order dated 04.05.2021. The parties were given an opportunity to file their objections/suggestions, if any, to the three reports of the DG and directed to file their certain financial statements.

Proceedings before the Commission:

12. After the receipt of objections/suggestions to the DG reports and financial statements from the parties (confidential and non-confidential versions), the Commission heard oral arguments on behalf of the parties on 17.08.2021 and 18.08.2021 and decided to pass an appropriate order in the matter.

Assessment of Evidences:

13. The Commission has perused the applications filed by NSK and JTEKT under Section 46 of the Act read with the LPR, the reports submitted by the DG, the objections/suggestions thereto filed by the parties and other material available on record, and also heard oral arguments addressed by the respective learned counsel(s) for the parties.
14. The Commission notes that, though the DG has, in its investigation reports, investigated contacts/exchange of information between the employees and executives of various Bearings manufacturers with respect to various RFIs/RFQs issued by various Automobile and Industrial OEMs, it has found contravention of the provisions of the Act only by three parties, viz., NSK, JTEKT and NTN, that too only in two instances:



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- (a) For [REDACTED] RFI issued by [REDACTED] in [REDACTED] for the procurement of Hub 1 (Front Wheel) and Hub 3 (Rear Wheel) Bearings for its upcoming model, [REDACTED]; and
- (b) For RFQs issued by [REDACTED] in [REDACTED] for Hub Bearings for [REDACTED] platform, [REDACTED].
15. As such, since sufficient evidence with respect to contravention by any other Bearings manufacturer or with respect to any other RFI/RFQ issued by any Automobile or Industrial OEMs has not come forth during the investigation, the Commission limits its assessment and analysis to the above-mentioned two RFI/RFQ only, with respect to which the DG has found contravention. The same is set out in the paragraphs below.
- (I) [REDACTED] RFI issued by [REDACTED] in [REDACTED] for procurement of Front and Rear Wheel Bearings for [REDACTED] model**
16. From the submissions made by the parties and [REDACTED] before the DG, the Commission notes that [REDACTED] had issued a [REDACTED] RFI (pre-RFQ) in [REDACTED] for the procurement of Hub 1 (Front Wheel) and Hub 3 (Rear Wheel) Bearings for its upcoming model [REDACTED]. The RFI envisaged production of [REDACTED] in various countries/regions, i.e., [REDACTED] and India. [REDACTED] was marketed as [REDACTED] in India. The annual quantity of planned production of [REDACTED] in India from [REDACTED] was about [REDACTED]. This RFI was issued to multiple Bearings suppliers in Japan, including NSK, JTEKT and NTN.
17. As per [REDACTED] submission before the DG, for the vehicles to be manufactured in India, [REDACTED] Indian subsidiary, [REDACTED] ('[REDACTED]'), as the final decision maker, procures the components for mass production through direct negotiations with suppliers for the purpose of deciding the final price. [REDACTED] has no role to play in this regard. After gathering estimates from suppliers, [REDACTED] only shares the related information for the subject parts with various [REDACTED] affiliate companies, including but not limited to [REDACTED] in India. The purpose of this information gathering through RFI and sharing is only for the reference of each affiliate company to study and decide about their procurement of the subject parts.



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18. As such, pursuant to the RFI, [REDACTED] in India issued the RFQ for [REDACTED] for procurements of Bearings in [REDACTED]. However, in the meantime, JFTC had conducted an on-site inspection of four Japanese companies, viz., NSK, JTEKT, NTN and Nachi-Fujikoshi Corporation, on 25.07.2011.
19. [REDACTED] submitted before the DG that, for Hub 1 Bearings (Front Wheel), RFQ was issued to two suppliers—NSK and SKF. Since the quote of NSK was lower than that of SKF, [REDACTED] issued the supply order to NSK at a negotiated rate and NSK supplied the Front Hub 1 Bearings in [REDACTED]. As regards Hub 3 Bearings (Rear Wheel), RFQ was issued to three Bearing suppliers—NTN, NSK and Koyo Bearings India Limited ('Koyo'). The quote of NTN was slightly lower than that of NSK, while Koyo was technically disqualified. Hence, [REDACTED] issued the supply order to NTN, who supplied Rear Hub 3 Bearings in [REDACTED].
20. It is also noted that NSK (for Hub 1) and NTN (for Hub 3) were also the previous Bearings suppliers for previous [REDACTED] model for all regions.
21. With respect to the alleged cartelisation in the [REDACTED] RFI, the parties submitted as under:
- (a) NSK submitted that [REDACTED], [REDACTED] at NSK Ltd., Japan, telephonically contacted [REDACTED], [REDACTED] at JTEKT Corporation, Japan, and [REDACTED], [REDACTED] at NTN, on a bilateral basis in [REDACTED]. At least four conversations took place. It was agreed between the parties that, in accordance with the prevailing supply contract, NSK and NTN would allocate the supply of Front Hub 1 Bearings to NSK and Rear Hub 3 Bearings to NTN in the [REDACTED] Model. As such, NSK would quote a higher price for Rear Hub 3 Bearings while NTN would quote a higher price for Front Hub 1 Bearings. Since the prices differed for each region of production, NSK and NTN exchanged the pricing information for each region. Based on such discussions, [REDACTED] of NSK also prepared a chart of proposed quotations of the parties. Pursuant to this arrangement, NSK gave a quotation to [REDACTED] in [REDACTED] for certain regions and in [REDACTED] for India and [REDACTED]. Copies of such quotations given by NSK and NTN to [REDACTED] were also submitted by NSK.



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- (b) JTEKT submitted that it received the RFI from [REDACTED] on [REDACTED]. Around [REDACTED], [REDACTED] of JTEKT received calls from [REDACTED] of NTN and [REDACTED] of NSK in this regard. The two companies had contacted JTEKT because they wanted to maintain their shares of business with [REDACTED]. [REDACTED] had contacts with NTN and NSK several times. JTEKT had no share in any supplies for the erstwhile [REDACTED] model. Both NSK and NTN informed their intended prices to [REDACTED], which included prices for the Asia Pacific region, including India. [REDACTED] responded that such prices would be considered by JTEKT. JTEKT also submitted a copy of the internal memorandum prepared by [REDACTED] in this regard, which summarised the information provided by persons from NTN and NSK. The memorandum had a description of 'Manufacturing Hub 1 and Hub 2 in India' (NSK-related) and 'Manufacturing Hub 3 at its subsidiary in India' (NTN-related). The memorandum had a reference of Thailand, which is on account of the fact that JTKET proposed delivering the products to [REDACTED] in Thailand as JTEKT did not have a manufacturing location in India at the time. JTEKT submitted that NTN and NSK proposed to supply through their Indian manufacturing locations. JTEKT also submitted that it had internally calculated the quotation price and knew that it would have to quote higher than the communicated pricing levels of NTN and NSK anyway due to the lack of its price competitiveness. JTEKT submitted that it has been unable to find any evidence as to whether it provided a quotation to [REDACTED], but it asserted that, in case it had provided a quotation, the quote given would be a little higher than those of NSK and NTN. As a result, JTEKT was dropped as a candidate supplier at the RFI stage.
- (c) NTN submitted that its [REDACTED], [REDACTED], may have had some contacts with NSK and JTEKT sometime in [REDACTED] regarding Hub Bearings for [REDACTED]. However, NTN does not have any information on the substance of the discussions, if any. NTN believes that there was no agreement between NTN and any of its competitors, especially in regard to alleged coordination of prices in RFQs/tenders for the aforesaid products or alleged allocation of geographical and/or product market(s) in India, particularly in reference to this specific product. Further, [REDACTED] had no authority to enter



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into such an agreement, even if attempted. As such, clearly, no agreement could have or had been reached. NTN further stated that, after NTN submitted its first quotation in [REDACTED], it heard from [REDACTED] that NSK had aggressively submitted the quotations for Hub 3 Bearings (Rear) to be supplied in India in order to win the bid. As a result, NTN reduced the price for that product to obtain the order and submitted a revised quotation to [REDACTED] in [REDACTED]. Hence, there was severe competition. Further, in [REDACTED], [REDACTED] changed the specifications for the products and asked NTN to submit a new quotation. NTN did not have any contact with any competitors around that time and, once again, independently decided the quotation price for the product to be supplied in India.

22. Based on the fact that [REDACTED] of NSK, [REDACTED] of JTEKT and [REDACTED] of NTN were stated to have been involved in the alleged coordination with respect to this RFI, the DG recorded/obtained the statements on oath/reply Affidavit of these persons. Further, the DG obtained a copy of the chart alleged to have been prepared by [REDACTED] of NSK and a copy of the internal memorandum allegedly prepared by [REDACTED] of JTEKT with respect to the coordination. The same are as below:

[REDACTED] of NSK

- (a) [REDACTED] of NSK, in his statement before the DG, stated that he contacted [REDACTED] of JTEKT and [REDACTED] of NTN with respect to the pre-[REDACTED] RFQ launched by [REDACTED] in [REDACTED] for the [REDACTED] model.

He initiated contact with [REDACTED] of NTN using his cell phone around [REDACTED] and proposed that both companies respect the current share of NSK and NTN for Front Hub 1 Bearings and Rear Hub 3 Bearings respectively, for [REDACTED] current model. He also disclosed NSK's prices of Front Hub 1 Bearings. NTN agreed to this proposal, and [REDACTED] disclosed NTN's prices to [REDACTED]. He also provided, along with his statement, the details pursuant to his discussions with NTN in a printed tabular form.



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As far as JTEKT is concerned, [REDACTED] stated that, in [REDACTED], he contacted [REDACTED] of JTEKT on his mobile to discuss how to submit quotations for the pre-RFQ launched by [REDACTED]. First, he requested [REDACTED] not to submit a price lower than NSK's price for Front Hub 1 Bearings because NSK had the current share. However, he did not make any request for Rear Hub 3 Bearings, because NTN had the current share. JTEKT agreed to this because there was an unwritten agreement between NSK and JTEKT that NSK would respect the current share of JTEKT for future or other projects. Thereafter, he disclosed the prices of NSK for Front Bearings and asked JTEKT to quote higher than NSK. His contact with JTEKT provided him with greater predictability at the formal RFQ stage as he had conveyed NSK's price to JTEKT with a request that it could not quote lower than NSK's price. His contact with NTN and JTEKT helped NSK obtain [REDACTED] share of business in India in relation to [REDACTED] model.

He further stated that, after the aforesaid agreement with competitors, he contacted the buyer at [REDACTED] to enquire about quotations submitted by other competitors. The buyer told him that, for Front Hub 1 Bearings, the price provided by NSK was more competitive than NTN, whereas for Rear Hub 3 Bearings, the price provided by NTN was more competitive than NSK. In [REDACTED], prior to the dawn raid conducted by JFTC, a formal RFQ was launched by [REDACTED]. JFTC had conducted the dawn raid on NSK on 26.07.2011. Post the dawn raid, [REDACTED] did not respect the above-mentioned agreement with NTN, and instead, NSK submitted lower quotes for both Bearings to [REDACTED] (lower than what was agreed upon at the pre-RFQ stage). However, NSK's final quote to [REDACTED] was prepared knowing the discussions which were had with NTN in relation to their prices at the pre-RFQ stage. In this regard, despite quoting lower than the agreed-upon prices at the pre-RFQ stage, NTN was awarded the business for Rear Hub 3 Bearings by [REDACTED], and NSK was only awarded the business for Front Hub 1 Bearings. Further, there were certain technical specifications that were changed from the pre-RFQ stage to the formal RFQ stage.



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(b) In the tabular printout submitted by [REDACTED] along with his statement, the discussed quotations of NSK and NTN for all seven countries for which the RFI was issued, including India, are mentioned. The quotations for India are as under:

Company	Rear Hub (In INR)
NSK	[REDACTED]
NTN	[REDACTED]

(c) In the actual quotations submitted in response to the [REDACTED] RFI, which NSK has submitted along with its submission before the DG, NSK and NTN quoted with respect to India as follows:

Company	Front Hub (In INR)	Rear Hub (In INR)
NSK	[REDACTED]	[REDACTED]
NTN	[REDACTED]	[REDACTED]

(d) In his cross-examination conducted by NTN, [REDACTED] submitted that he does not remember the exact time he spoke to [REDACTED] of JTEKT and [REDACTED] of NTN; however, he remembers that he spoke to [REDACTED] once and with [REDACTED] three or four times. The general period in which the calls were made was [REDACTED]. Though he does not remember the duration between each call, he has a vague idea of how long each call lasted. He also remembers the content of discussions made on each call, which was related to prices with respect to all seven regions for which the [REDACTED] RFI was issued, i.e., India, [REDACTED] and [REDACTED]. Though the Indian market may not be number 1, it was an important market. He stated that he did not make note of the prices discussed between him and [REDACTED] of JTEKT immediately after his call. He stated that he had made a note, but not immediately after the call. With respect to his calls with [REDACTED] of NTN, he remembers making notes, but not after every call; he does not remember which calls he made notes after. He also admitted that he did not produce before the DG the notes he had allegedly made after speaking with [REDACTED] of NTN. He only shared the contents of such notes from his memory, in the form of a chart/table, during his deposition before the DG. He also did not share any such notes with anyone at



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NSK. The chart/table given to the DG was made by him in [REDACTED], but the same no longer exists on his computer at NSK, since his computer was replaced. Though he did share a copy of this chart with somebody at NSK, he does not remember who this was. He did not share such e-mail of him sending the chart to somebody at NSK or take a print out of such e-mail for the DG. The table submitted to the DG is not an exact replica of the table he had made on his erstwhile office computer. There is no evidence produced by him apart from this chart/table before the DG which may show that price discussions took place between him and his counterparts.

With respect to the subsequent [REDACTED] RFQ, he stated that the prices quoted by NSK in the RFQ were not the same as the prices quoted in the RFI; rather, the prices quoted in the RFQ were lower. The reason for the same was that, in the meantime, he had received some internal documents of [REDACTED] from someone, which showed that if NSK quotes as per the rates quoted in the RFI, it would not be able to maintain its share. These internal documents were not shared by him with anyone at NSK, and he does not know if the same were shared with the DG. However, he had mentioned receiving this internal information of [REDACTED] in his deposition before the DG. He stated that, even though the specification and design of the parts was modified from the stage of RFI to RFQ, the prices quoted in response to RFI were still relevant while preparing the prices for RFQ. He did not compete aggressively with competitors at the RFQ stage; rather, NSK had cartelised with JTEKT and NTN. He stated that, when he was able to receive the actual price information from [REDACTED] before RFQ, he realised that NSK would not be able to maintain its current share for Front Hub 1 Bearings. Hence, NSK quoted lower. When this information was received, [REDACTED] did not want to respect his understanding arrived at with NTN. However, since the final objective was to maintain the current share of Front Hub 1 Bearings to NSK and Rear Hub 3 Bearings to NTN, eventually, they got the order as per the agreement only and, as such, he did respect the cartel agreement.



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██████████ of JTEKT

- (e) ██████████ of JTEKT, in his statement before the DG, stated that the RFI for ██████████ was issued in ██████████. With respect to the same, he received around three or four calls on his mobile in ██████████, each from ██████████ ██████████ of NTN and ██████████ of NSK. They checked if JTEKT had also received the RFI from ██████████. Though NSK and NTN were probably suppliers of Bearings for existing models of ██████████, for the upcoming model, they requested cooperation from JTEKT. They expected JTEKT to quote prices higher than their planned estimated prices in order to retain their respective shares in the upcoming ██████████ model. JTEKT had a negligible share in its segment with ██████████, and it wanted to know competitors' quotes so that it could increase its business in the long run with ██████████. ██████████ prepared an internal memorandum summarising the cooperation requested by NSK and NTN on ██████████ and submitted the same to the Sales and Marketing Department at headquarters, which gives final approval for quotes to be submitted. The internal memorandum contains the proposed quotes of NSK and NTN, and the same was submitted along with his statement before the DG. He further stated that JTEKT did give quotes to ██████████ in the RFI, but since the same were higher than those of NSK and NTN, it lost out. However, JTEKT benefitted from the cartel as it was understood that, in order for JTEKT to have any chance of getting orders from ██████████, it will have to match the prices of NSK and NTN. Hence, it had the benefit of getting competitors' price level information for future models. In ██████████, JTEKT's Indian subsidiary received the RFQ from ██████████ for the ██████████ model.
- (f) In the printout of the internal memorandum submitted by ██████████ along with his statement, it is noted that no prices for India are mentioned.
- (g) In his cross-examination conducted by NTN, ██████████ stated that he spoke to ██████████ of NTN around two to three times in ██████████, around 5–10 minutes each time. He also received calls from ██████████ of NSK. Immediately after his calls, he did not make any written notes. However, while he still retained the contents of the calls, he had scribbled notes about the price



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information received during the calls. Only Japan's prices were disclosed to him during the calls—for both production and supply in Japan. Pricing discussions did not take place during the calls, and [REDACTED] was only informed of NSK and NTN's proposed quotes. On [REDACTED], [REDACTED] made an internal memorandum on the basis of his notes on his office computer. The memorandum also contained prices for countries other than Japan, based on the CIM (Cost Index) information received. These countries are [REDACTED] and [REDACTED]. However, no information with respect to India was shared by [REDACTED] of NSK or [REDACTED] of NTN with [REDACTED], and as such, it does not form part of his internal memorandum. The original file of the memorandum on his computer no longer exists as his computer has since been changed. The original file was made in Japanese. He had e-mailed this memorandum to his senior, [REDACTED]; however, he is not aware whether this e-mail has been produced by JTEKT before the DG. He also mentioned his calls to [REDACTED]. Sometime between [REDACTED] and [REDACTED], he also made certain alterations in the printout of this memorandum by hand. The original printout of this memorandum, which he had retained in a file, were taken away during the raid by JFTC. [REDACTED] stated that the quote submitted by JTEKT to [REDACTED] in the RFI was not on the basis of the prices contained in the internal memorandum; as far as RFQ is concerned, since JTEKT at Japan did not receive the same, but instead, its Indian subsidiary Koyo Bearings received the RFQ from [REDACTED] in India, he cannot make any comments about the [REDACTED] RFQ. [REDACTED] categorically accepted that he had never had any discussions with [REDACTED] of NTN with respect to any pricing issues for [REDACTED] RFI that have any relevance for the Indian market.

[REDACTED] of NTN

- (h) [REDACTED] of NTN, in his reply Affidavit before the DG with respect to the statement of [REDACTED] of NSK, admitted to having contact with [REDACTED] over the phone regarding pre-[REDACTED] RFQ for the [REDACTED] model launched in [REDACTED]. However, he stated that he does not remember the substance of such discussions clearly. He further stated that, after NTN submitted



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its first quotation in [REDACTED] and [REDACTED], NTN heard from [REDACTED] that NSK had aggressively submitted a quotation for Rear Hub 3 Bearings to be supplied in India in order to win the bid; hence, NTN reduced the price for that product in order to obtain the order and submitted a revised quotation to [REDACTED] in [REDACTED]. [REDACTED] submitted that the fact that NSK aggressively competed with NTN to obtain orders for Rear Hub 3 Bearings to be supplied in India shows that no agreement was reached between the two companies. In [REDACTED], [REDACTED] changed the specifications for the products and asked NTN to submit a new quotation. [REDACTED] did not have any contacts with competitors around that time and NTN once again independently decided the quotation price for products to be supplied in India.

With regard to the statement of [REDACTED] of JTEKT, [REDACTED] admitted to having contact with [REDACTED] over the phone in [REDACTED] regarding [REDACTED] pre-[REDACTED] RFQ; however, again, he stated that he does not remember the substance of such discussions clearly. He stated that he might have asked about JTEKT also having received the pre-RFQ from [REDACTED]. However, he stated that JTEKT had not obtained any orders for the relevant Bearings for the existing model and no agreement was reached between him and [REDACTED].

23. From the above replies and statements of officials of the three parties, along with documentary evidence produced by them, the DG concluded that the [REDACTED] of NSK, NTN and JTEKT, namely, [REDACTED] of NSK, [REDACTED] of JTEKT and [REDACTED] of NTN, had several telephonic conversions in [REDACTED] with respect to the [REDACTED] RFI for [REDACTED], wherein they exchanged their intended bid prices to be quoted to [REDACTED]. The purpose of such information exchange was that NSK and NTN wanted to retain their existing share of business in [REDACTED]. On the other hand, JTEKT, which had negligible business with [REDACTED], participated in such exchange of information only to gain business enquiries. The DG observed that sharing of price-sensitive information prior to actual bidding amounts to manipulation of bidding process by these three entities. Further, though such conduct had ceased subsequently at the RFQ stage due to the dawn raid by JFTC on 26.07.2011, the conduct of these companies at the RFI stage cannot be condoned.



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24. Regarding appreciable adverse effect on competition ('AAEC') in India resulting from such co-ordination, the DG analysed the factors stated under Section 19(3) of the Act and noted that, since Hub Bearings are homogenous products, at the RFI stage, price factor was the only element of competition among the parties. Hence, such collusion between them foreclosed competition in the market as it did not allow OEM [REDACTED] a choice in terms of lower prices. Further, the DG observed that such collusion had no positive outcome in terms of accrual of benefit to consumers (i.e., to OEM or purchasers of vehicles), or improvement in production or distribution of the product or promotion of technical, scientific or economic development. The DG observed that, though such collusion amongst NSK, NTN and JTEKT occurred outside India, the same was also directed at the Indian market, prices and customers. Further, though the actual quotes given by NTN and JTEKT are not available, on the basis of the quotes submitted by NSK to [REDACTED] in [REDACTED], and assuming the production schedule of the car to be [REDACTED] units per year for five years, the approximate value of Hub Bearings likely to be affected by such collusion is around ₹ [REDACTED] crores, calculated as follows:

	No. of Hub 1 Bearings (Front Wheel)	No. of Hub 3 Bearings (Rear Wheel)
For 1 year	[REDACTED]	[REDACTED]
For 5 years	[REDACTED]	[REDACTED]
Quotes of NSK	[REDACTED]	[REDACTED]
Total value of Bearings	[REDACTED]	[REDACTED]

25. In view of the above, the DG concluded that the three parties, namely, NSK, JTEKT and NTN, indulged in bid-rigging in the RFI of [REDACTED] for Hub Bearings for [REDACTED], and thereby, contravened the provisions of Section 3(3)(a) and Section 3(3)(d) read with Section 3(1) and Section 32 of the Act.

26. In the view of the Commission, from the statements of [REDACTED] of NSK and [REDACTED] of JTEKT, as well as the reply Affidavit of [REDACTED] of NTN, telephonic discussions between these officials in [REDACTED] with respect to the [REDACTED] RFI are clearly established. Regarding the content of such discussions, it is evident from the statements of [REDACTED] of NSK and



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██████████ of JTEKT that NSK conveyed its quotes for Front Hub 1 Bearings to JTEKT and NTN, and NTN conveyed its quotes for Rear Hub 3 Bearings to NSK and JTEKT. As per ██████████ of NTN, he does not clearly remember the discussions that had taken place on the calls.

27. However, a major contradistinction is noted between the cross-examination of ██████████ of NSK and ██████████ of JTEKT with respect to discussions on the Indian market. According to ██████████ of NSK, price discussions with NTN took place with respect to all seven regions for which the RFI was floated, including India. However, as per ██████████ of JTEKT, the prices it informed to NSK and NTN held no relevance for the Indian market.
28. Both individuals have submitted documentary evidence in support of their statements, i.e., a table/chart prepared by ██████████ of NSK and an internal memorandum prepared by ██████████ of JTEKT. The Commission notes that, in the internal memorandum prepared by ██████████ of JTEKT, prices with respect to India are not stated; however, in the table/chart prepared by ██████████ of NSK, prices with respect to India are given, which prices also align with the actual quotes submitted for Rear Hub 3 Bearings by NSK and NTN to ██████████ in ██████████. However, with respect to such table/chart, ██████████ of NSK has stated in his cross-examination that the table/chart placed on record is not an exact replica of that which he had prepared. He has also stated that the table/chart made is not the original document he had prepared after his calls with his counterparts at the competing companies, but rather, the same was made later from his original notes. Such notes, which were the primary evidence in relation to the discussions made on calls, have not been produced by NSK before the DG, since they are stated to have been destroyed at the time of preparation of the computerised table/chart. The date of preparation of such table/chart by ██████████ is not clear; he only states that it was made sometime in ██████████. However, there is no evidence to prove the same. ██████████ has stated in his cross-examination that he had mailed this chart/table after preparation to someone at NSK; however, he does not remember who this was. NSK has also not produced on record any such e-mail



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sent by [REDACTED] to his senior at NSK to establish the date of creation of this chart.

29. It is also noted with respect to both the pieces of documentary evidence, both of which are computer printouts, that neither of them is supported by a Certificate in terms of Section 65B of the Indian Evidence Act, 1872. NTN has argued that the Hon'ble Supreme Court of India, in *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473, and thereafter in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Others*, (2020) 7 SCC 1, has clearly laid down the law that Certificate under Section 65B is mandatory for the admissibility of secondary evidence produced by an electronic record. In view of such settled law, the Commission is of the view that, in the present case, it is difficult to place reliance on any of these two documents without such Certificate.
30. If the same are ignored, the sole evidence to the fact that discussions with respect to the prices for Indian market took place between NSK, JTEKT and NTN is the statement of [REDACTED] of NSK. [REDACTED] of JTEKT has also stated that the discussions made had no relevance to the Indian market. In the view of the Commission, the sole oral evidence given by a single individual is not sufficient in light of the present facts and circumstances to establish a case of co-ordination between NSK, JTEKT and NTN having a nexus to the Indian market.
31. As such, in the opinion of the Commission, the evidence on record is not sufficient to establish a case of contravention of the provisions of the Act by NSK, JTEKT and NTN with regard to the [REDACTED] RFI for [REDACTED] Model.

(II) RFQs issued by [REDACTED] in [REDACTED] for Hub Bearings for [REDACTED] platform, [REDACTED]

32. From the submissions made by the parties and [REDACTED] ('[REDACTED]') before the DG, the Commission notes that [REDACTED], which procures parts for [REDACTED], had issued RFQs to three Bearings manufacturers, viz., NSK, NTN and SKF, and Technical Information to JTEKT, in [REDACTED], for procurement of Bearings for [REDACTED] or [REDACTED]. [REDACTED] was the [REDACTED] model scheduled to be manufactured in multiple regions, i.e., [REDACTED]



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██ and India. The RFQs covered Bearings (both Front and Rear) for the ██████ and ██████ models, both of which are manufactured and sold in India.

- 33. This RFQ was finalised in favour of NTN on ██████████ as its quotation was the most competitive because it used National Engineering Industries Ltd. ('NEI'), a local supplier in India. The volume of vehicle production planned was ██████ per year for six years. The production volume planned for the Indian site was about 15% of the global volume, and production was scheduled from ██████████. The value of yearly procurement made from ██████████ to ██████████ was as follows:

Period/Financial Year	Total Amount (in ₹ crore)
██	████████████████████
██	████████████████████
██	████████████████████
██	████████████████████
██	████████████████████
██	████████████████████
██	████████████████████
██	████████████████████
██	████████████████████
██	████████████████████
Total	397.09

- 34. With respect to the alleged cartelisation in the these RFQs, the parties submitted as under:

- (a) NSK initially made no disclosures with regard to the ██████ RFQ. However, when the DG posed a specific query with regard to contacts/information exchange in connection with ██████████ RFQ for the ██████ project, NSK submitted that ██████████ had issued RFQ to NSK for Front and Rear wheels in two rounds in relation to the supply of Hub Bearings for the ██████ project. ██████████ initially intended to procure Hub 1 Bearings for Front Wheel and Hub 3 Bearings for Rear Wheel. Therefore, it issued the first round RFQ to NSK. However, at a later stage, ██████████ decided to procure Hub 1 Bearings only for both Front and Rear Wheels, and accordingly, issued second round RFQ to NSK. In response to first round RFQ,



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NSK submitted its quotation to [REDACTED] on [REDACTED]. With respect to second round RFQ, NSK submitted five quotations to [REDACTED] (on [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]). NSK was however, not awarded the [REDACTED] project. [REDACTED] decided to choose NEI because of NEI's price competitiveness and a price difference between NSK and NEI in India of about 10%.

- (b) JTEKT submitted that it received a communication regarding [REDACTED] sourcing of the [REDACTED] platform around the end of [REDACTED]. [REDACTED] explained to JTEKT that it would launch production in India. JTEKT was not a member of the Suppliers' Panel at [REDACTED]. [REDACTED] set up the Suppliers' Panel based on whether local production as well as whether or not contracting by local currency is available. Since only members of the Suppliers' Panel received RFI and RFQ from [REDACTED], JTEKT received neither the RFI nor RFQ.

However, JTEKT voluntarily contacted [REDACTED] to provide an estimate for the supply of Bearings for the [REDACTED] project on account of the fact that it anticipated a surplus of production capacity at its Thailand manufacturing location. Hence, JTEKT received Technical Information in relation to the [REDACTED] project from [REDACTED] around the end of [REDACTED]. It provided an aggressive estimate on the condition that it would produce and supply from Thailand. [REDACTED] considered JTEKT's estimated price to be competitive despite the fact that Bearings would be manufactured and sold from Thailand.

With respect to the same, [REDACTED], [REDACTED] at JTEKT, met and exchanged information several times with [REDACTED], [REDACTED], [REDACTED] of NSK, and [REDACTED], [REDACTED] of NTN. Sometimes, other managers of these three Japanese companies also attended meetings. With respect to such meetings, JTEKT submitted two internal documents before the DG, which allegedly captures the communication that took place between JTEKT, NSK and NTN regarding prices for Bearings for the [REDACTED] platform of [REDACTED]. Such documents were prepared by a subordinate of [REDACTED] based on his instructions. The first document was prepared prior



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to [REDACTED], and the second one between [REDACTED] pertaining to [REDACTED] ([REDACTED] is also known as [REDACTED]). The same include details of production sites (of Bearings) and likely quotations of JTEKT, NSK and NTN for each type of Hub Bearing. At the meetings, JTEKT had shared a higher price than what it proposed to quote to [REDACTED], as well as disclosed the fact that it would manufacture the Bearings in Thailand. NTN also did not disclose the information correctly. As such, the prices listed in the internal documents were not the prices that JTEKT and NTN actually quoted to [REDACTED]. Despite this, NTN and NEI, to which NTN had licensed Bearings technology, won the whole [REDACTED] order from [REDACTED] based on the fact that their production was going to take place in India.

(c) NTN submitted that, in [REDACTED], it received an RFQ from [REDACTED] for Hub Bearings for the [REDACTED] project. In [REDACTED], it received an RFQ from [REDACTED] for Hub Bearings for the [REDACTED] model of [REDACTED] automobiles. According to this RFQ, Hub Bearings were to be sold in [REDACTED] and India. [REDACTED] of NTN recalls talking with various people within the industry, including [REDACTED] of JTEKT, in [REDACTED] and [REDACTED]. However, [REDACTED] does not remember the date, place or subject matter of such discussions clearly. At that time ([REDACTED]), NTN had a technical collaborative relationship with NEI located in India. In [REDACTED] and [REDACTED], NTN submitted its quotation assuming that NTN would supply the Bearings produced in India by NEI to the [REDACTED] factory in India. As a result, in [REDACTED], [REDACTED] decided to purchase from NTN the products manufactured by NEI for its production in India. NTN aggressively submitted its quotation and obtained the order from [REDACTED]. The quotations given by NTN on [REDACTED] and [REDACTED] were submitted by NTN to the DG. NTN also provided details of year-wise supply of Hub Bearings by NTN (including its local partner India) to [REDACTED] from [REDACTED] onwards.

35. Based on the fact that [REDACTED] of NSK, [REDACTED] of JTEKT and [REDACTED] of NTN were stated to have been involved in the alleged coordination with respect to the [REDACTED] RFQ, the DG recorded/obtained the statements on oath/reply Affidavits of these persons. The same are as below:



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██████████ of NSK

- (a) ██████████ of NSK did not state anything about cartelisation with respect to the ██████████ RFQs of ██████████ in its statement on oath recorded before the DG. However, when he was asked to specifically respond to the deposition on oath recorded of ██████████ of JTEKT, he, in his reply on Affidavit, stated that he has no objection to the statement of ██████████ relating to NSK's contacts with JTEKT in regard to ██████████ RFQs. He stated that though he does not remember clearly, but he had met ██████████ at the time and they had exchanged information with each other. ██████████ was looking for a new supplier for Bearings and NSK tried to get the order by appealing its quality and location. However, ██████████ finally decided to choose NEI because of its price competitiveness, and NSK missed the order for Bearings for the ██████████ platform from ██████████.

██████████ of JTEKT

- (b) ██████████, in his statement recorded before the DG, stated with respect to his contacts with competitors that he had received a telephone call from ██████████ ██████████ of NSK asking to meet. He met ██████████ of NSK and ██████████ of NTN at the beginning of ██████████ at Atsugi Sales Office Conference Room of NSK. He exchanged information with regard to the quote for Bearings with them.

The three of them met two or three more times at same place. He also spoke to ██████████ five to six times over the phone. Though he does not remember clearly, but he thinks his contact lasted till the second half of ██████████ and ceased when the sourcing results were out.

The information exchanged included the locations at which each company planned to manufacture and what price it intended to quote for each region. NSK mentioned that it would manufacture Bearings at desired locations of ██████████ and quote in local currency. NTN said that its entire volume of Bearings for ██████████ would be manufactured at only the China plant. However, it was later found that NTN was lying because it got the order for the India market along with NEI by proposing to manufacture in India. Thus, NTN did not honour its commitment.



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JTEKT also shared higher prices than what was approved internally within JTEKT. JTEKT had very limited regions where it could manufacture Bearings, and JTEKT had available production capacity in Thailand. As such, it wanted to know about NSK's and NTN's pricing in Thailand.

██████████ also mentioned that he reported these discussions in writing to his seniors at JTEKT.

(c) In his cross-examination conducted by NTN, ██████████ stated that, in ██████████, he met ██████████ of NSK and ██████████ of NTN two or three times in person with regard to India's ██████████ Hub Bearings. Such meetings lasted 1-2 hours. To the best of his memory, the interval between each meeting was two to three months. For each meeting, ██████████ used to call to fix up the meeting depending on the requirement to meet. ██████████ used to inform his senior after every meeting.

██████████ stated that, although he keeps a personal diary with a record of his schedule, he does not have the diary of ██████████ with him as the same was seized by JFTC in 2011. He stated that he has not produced any evidence before the DG with respect to such meetings; however, before his deposition in India, there was an internal hearing at JTEKT where he had provided his evidence to the company. Such evidence comprised two documents that contained information on the location and prices of NSK and NTN's products related to ██████████ Hub Bearing. These documents were prepared on his instructions by his subordinate on the subordinate's computer and summarised the information, and the same did not contain any information about his meetings with people from NSK and NTN or any signatures. He does not remember the exact date and time of preparation of these documents nor did he try to obtain the same from his subordinate's computer. ██████████ revealed the name of the subordinate who had prepared the documents, but he stated that he does not remember whether the name was disclosed during the recording of his statement. He stated that he had got the documents prepared after returning from NSK's office after his meetings. He had also disclosed about these documents before the DG.



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██████████ further stated that he had taken notes at each meeting in his own handwriting about the manufacturing locations and prices. However, such notes have not been produced before the DG. He also does not have these notes, and the same have probably been destroyed. However, the subordinate had prepared the two documents on the basis of these notes only. After every meeting, the notes were shared with the subordinate, and the subordinate prepared the document. After preparation of the document, the subordinate showed ██████████ a printout for confirmation. ██████████ does not know whether the original printouts have been given to the DG or not. He had not shared these documents with anyone at JTEKT in ██████████ or ██████████. However, the members who were directly related to the ██████████ RFQ later had access to these documents. ██████████ also stated that one person from JTEKT had made some handwritten noting on the printouts. However, such noting was not got approved from ██████████.

██████████ stated that, in the meetings, he gave false JTEKT quotations to NSK and NTN. As JTEKT had additional capacity in Thailand, the head office wanted JTEKT to bag the RFQ. Since ██████████ would, in any case, have negotiated for the price keeping in mind the margin for negotiation, he indicated a slightly higher price. With regard to NSK, since it was planning to manufacture locally in India for ██████████, he strongly believed that the information shared by NSK was quite reliable. However, with regard to NTN, ██████████ had stated that NTN is going to make all supplies from China, and he believed such information was false. Even though he believed ██████████ to be providing false information, he met ██████████ again to confirm whether he provides any further update on location and price. However, he was sharing slightly higher price quotations with NSK and NTN. Further, from ██████████, JTEKT was told that the price quoted for supplying from Thailand is quite competitive. As such, despite knowing that ██████████ was sharing false information, he kept continuing the discussions.

██████████ of NTN

(d) ██████████, in his reply on Affidavit filed before the DG, stated upon the deposition of ██████████ of JTEKT that, in ██████████, NTN



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received an RFQ from [REDACTED] for Hub Bearings for the [REDACTED] project. In [REDACTED], NTN received an RFQ from [REDACTED] for Hub Bearings for the [REDACTED] model of [REDACTED] automobiles. According to this RFQ, Hub Bearings were to be sold in [REDACTED] and India. [REDACTED] remembers talking to various people within the Bearings industry, including [REDACTED] of JTEKT in [REDACTED] or [REDACTED]. However, he does not remember the date, place or subject matter of such discussions clearly.

- 36. From the above replies and statements of officials of the three parties, along with documentary evidence produced by JTEKT, the DG concluded that [REDACTED] of JTEKT, [REDACTED] of NSK and [REDACTED] of NTN, through personal meetings and telephonic contacts in Japan in [REDACTED], exchanged sensitive information with regard to the quotes to be submitted by each of them, including their respective source of production to [REDACTED] in connection with Bearings for the [REDACTED] platform. The statement of [REDACTED] of JTEKT in this regard was found by the DG to be credible.
- 37. Thereafter, the DG noted from the copies of the internal documents provided by JTEKT that the likely quotations mentioned in the internal document prepared prior to [REDACTED] were as follows:

	Front Wheel	Rear Wheel	*Rates of JTEKT and NSK in Baht (currency of Thailand) while NTN's rates are in Rmb (currency of China)
JTEKT	[REDACTED]	[REDACTED]	
NSK	[REDACTED]	[REDACTED]	
NTN	[REDACTED]	[REDACTED]	

- 38. On the other hand, the rates actually quoted by JTEKT, NSK and NTN to [REDACTED] from time to time for Front and Rear Hub Bearings for [REDACTED] project during [REDACTED] and [REDACTED] were as follows:

JTEKT (In THB)			
Date of Bid	Front	Rear	Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



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NSK			
Date of Bid	Front	Rear	Total
████████	████████	████████	████████
████████	████████	████████	████████
████████	████████	████████	████████
████████	████████	████████	████████
████████	████████	████████	████████
████████	████████	████████	████████
NTN (In INR)			
Date of Bid	Front	Rear	Total
████████	████████	████████	████████
████████	████████	████████	████████

39. The DG also noted the details of bids (Front and Rear Bearings total) submitted by Bearings suppliers to ██████████, from ██████████ reply, as below:

Name of Supplier	Initial Quote	Final Quote
NTN	████████	████████
NSK	████████	████████
SKF	Technical NG	Technical NG
JTEKT	████████	████████

40. From a comparison of the rates likely to be quoted by NSK and the rates actually quoted by NSK, the DG noted that NSK’s quotes dated ██████████ to ██████████ for the Front Bearings and Rear Bearings were identical to the rates of NSK recorded in the internal document of JTEKT prepared at the instructions of ██████████ prior to ██████████ (see underlined rates in tables above). Thus, the DG concluded that NSK, *vide* its quotation dated ██████████, went on to quote to ██████████ the exact price which, as per ██████████, was exchanged among NSK, JTEKT and NTN prior to submission of this quotation. However, the DG noted that since neither NTN nor ██████████ could provide the actual quotes given by NTN to ██████████ in the year ██████████, it could not be ascertained as to whether NTN’s quotes to ██████████ in ██████████ matched the rates mentioned in the internal document as well. Regarding JTEKT’s rates, the DG noted that JTEKT had stated that it believed NSK and NTN were, in fact, passing on



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false information to it with respect to their prices and production places. Therefore, it is unsurprising that the quotes of NSK were lower than those of JTEKT.

41. On the basis of the above evidence, the DG concluded that NSK, JTEKT and NTN repeatedly exchanged sensitive information related to their intended future price and sourcing locations and acted in a concerted manner, as information exchange amongst them resulted in serious compromise of their independence in the decisions in the [REDACTED] RFQ. Such mutual and repeated sharing of sensitive information on pricing and sourcing of Bearings for supply at various manufacturing locations including India amongst the main competitors, i.e., JTEKT, NSK and NTN (the fourth competitor, SKF, was technically disqualified), prior to actual bidding virtually eliminated competition and vitiated the tendering process of [REDACTED] for the procurement of Hub Bearings for [REDACTED] platform vehicles [REDACTED] and [REDACTED]. Hence, NSK, JTEKT and NTN indulged in bid-rigging or collusive-bidding in the [REDACTED] ([REDACTED]) RFQ for [REDACTED] platform vehicles in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act.
42. In the view of the Commission, the statements/reply on Affidavits of [REDACTED] of NSK, [REDACTED] of JTEKT and [REDACTED] of NTN are not in sync with each other. While, on the one hand, [REDACTED], in his statement on oath before the DG, stated that he had two or three meetings together with [REDACTED] of NSK and [REDACTED] of NTN at NSK's office, where prices and locations with respect to [REDACTED] RFQs were discussed, [REDACTED] of NSK or [REDACTED] of NTN do not corroborate this averment of [REDACTED]. [REDACTED], in his reply Affidavit, has only acknowledged [REDACTED] statement to the extent of him meeting with [REDACTED] at NSK's office. Similarly, while [REDACTED] of NTN has acknowledged meeting [REDACTED] of JTEKT, he does not mention meeting [REDACTED] of NSK.
43. In this backdrop, the Commission notes that the material brought on record is not sufficient to establish the fact that meetings between [REDACTED] of NSK, [REDACTED] of JTEKT and [REDACTED] of NTN, as alleged, took place, let alone what was discussed during such alleged meetings. It is noted that [REDACTED]



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██████████ of NSK has, in his reply Affidavit, only confirmed ██████████ statement to the extent of him having “contacts” with ██████████. What discussions took place during such contacts between ██████████ and ██████████, has not been brought forth.

44. Regarding the internal memorandum allegedly prepared by ██████████ subordinate on his instructions in which NSK’s correct proposed quotations to ██████████ are mentioned, the Commission notes from the cross-examination of ██████████ by NTN that ██████████ has been unable to provide the date and time of preparation of such an internal memorandum. The handwritten notes on the basis of which this document is stated to have been prepared are stated to be probably destroyed and have never been produced on record. In fact, there is no mention of the same in ██████████ statement on oath before the DG or JTEKT’s reply. Further, though the date and time of preparation of such computerised document could have been taken from the computer on which the document was prepared, ██████████ or JTEKT did not even try to retrieve such information from the subordinate’s computer. In his statement on oath, ██████████ did not even disclose the name of the subordinate who had allegedly prepared such a document; the name was disclosed only during cross-examination. Also, it is not clear if the document produced before the DG is the original printout which had been allegedly given by the subordinate to ██████████ for verification. ██████████ has stated that he had not shared the document with anyone at JTEKT in ██████████ or ██████████. However, access to the same was later provided to other members at JTEKT. Further, ██████████ has stated that, one person from JTEKT had made some handwritten notes on the printout provided to the DG. However, such noting was not got approved from ██████████.
45. Thus, in view of the above, whereby the time of preparation of such alleged document cannot be confirmed, and in the absence of even a Certificate in terms of Section 65B of the Indian Evidence Act, 1872, in support of such documentary secondary electronic evidence, no reliance can be placed on such a document.
46. Consequently, in light of the above analysis, in the opinion of the Commission, the evidence on record is not sufficient to make out a case of contravention of the



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provisions of the Act by NSK, JTEKT and NTN in regard to the [REDACTED] RFQs for [REDACTED] Platform.

47. Having held so, the Commission observes that no doubt competitors can interact with each other on a common platform provided by their association or otherwise to discuss issues concerning their trade, yet it may be noted that such interactions and discussions cannot transgress legitimate contours, particularly into areas proscribed by the Act.
48. At this stage, the Commission is constrained to note that in the present matter, the lesser penalty applicants have not provided sufficient details and material particulars in support of the averments made by them. The broad based applications filed by such applicants contain only bald and abstract admissions of certain concerted acts which, in the factual matrix of the case as adumbrated supra, are not sufficient to return any definitive finding of contravention of the provisions of the Act.
49. Before parting, it is also noted that NTN has made a submission about the application of provisions of the Act to the [REDACTED] RFQs by arguing that, since the RFQ stood finalised before 20.05.2009 (the date on which the provisions of Section 3 of the Act came into force), the Commission cannot take cognizance of any cartel in respect of such RFQ, even if found, as that would amount to application of the provisions of the Act in a retrospective manner.
50. In this regard, the Commission clarifies that, since the supply of Bearings in India, pursuant to such [REDACTED] RFQ took place in India post 20.05.2009 and, as such, any AAEC in India as a result of cartelisation in this RFQ would have been caused or likely to be caused post 20.05.2009 (the date on which the provisions of Section 3 of the Act came into force), the Commission has the jurisdiction to take cognizance of any such cartel. Therefore, the submission of NTN in this regard is misconceived.

Conclusion:

51. With the above observations, the Commission concludes that, in light of insufficient evidence being put forth by the DG or lesser penalty applicants, no case of contravention of the provisions of the Act with respect to the Bearings (Automotive and



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Industrial) market can be made out. As such, the matter is directed to be closed forthwith.

52. The Commission further directs that two versions of the present order may be prepared, i.e., a non-confidential *qua* parties version and the public version. The same shall be prepared keeping in mind confidentiality requests made by the parties, the orders passed in this regard and the provisions of Section 57 of the Act.
53. The Secretary is directed to communicate to all concerned accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 21.10.2021

Sd/-
(Bhagwant Singh Bishnoi)
Member