



## ERGO

*Analysing developments impacting business*

### CCI CONCLUDES NO CONTRAVENTION AGAINST BEARINGS MANUFACTURERS

22 October 2021

The Competition Commission of India (CCI) has passed a final order *In Re: Cartelisation in the supply of Bearings (Automotive and Industrial)* dated 21 October 2021, *Suo Motu* Case No. 7(02) of 2014. The investigation was conducted against NSK Ltd., Japan, NSK International (Singapore) Pte. Ltd. and NSK Bearings India Pvt. Ltd. (NSK); JTEKT Corporation, Japan, and Koyo Bearings India Ltd. (JTEKT); and NTN Corporation, Japan (NTN).

#### **Facts**

The investigation was initiated pursuant to a leniency application filed by NSK based on which the CCI formed a *prima facie* view of contravention of the Competition Act, 2002 (Competition Act) and directed the Director General, CCI (DG) to submit an investigation report. During the course of the investigation, JTKET also filed a leniency application before the CCI.

The DG submitted its investigation report concluding contravention of the Competition Act by NSK, JTKET, and NTN with respect to certain Request for Informations (RFI) issued by a certain automotive OEM outside India, for the procurement of front wheel and rear wheel bearings, for its upcoming model.

The DG also submitted a supplementary investigation report based on the direction of the CCI and concluded contravention of the Competition Act by NSK, JTKET, and NTN with respect to RFQs for hub bearings issued by a certain automotive OEM, outside India.

#### **Analysis by the CCI**

The CCI observed that even though the DG investigated various bearings manufactures, it concluded a contravention of the Competition Act only against NSK, JTKET, and NTN and pertinently only on two instances.

For the first RFI in relation to front wheel and rear wheel bearings, the CCI observed that telephonic discussions between employees of NSK, JTKET, and NTN were clearly established with respect to the RFI. However, the CCI found that there was a contradiction between the cross-examination of the employees of NSK and JTKET. Further, the documentary evidence submitted by NSK and JTKET (i.e., computer printouts) were not supported by a certificate under Section 65B of the Indian Evidence Act, 1872 (Evidence Act). Therefore, the CCI could not place reliance on any such secondary evidence in the absence of such a certificate and settled principles of law.

Since reliance could not be placed on secondary evidence, the only remaining evidence was the oral testimony of an individual, which would not be enough to establish coordination between NSK, JTKET, and NTN in Indian markets.

For the second RFQs for hub bearings, the CCI observed that the statement of the employees of NSK, JTKET, and NTN were not in sync with each other. Therefore, the material available was not enough to establish the fact that meetings took place or any discussions relating to price happened. Further, the certificate under Section 65B of the Evidence Act was also not available and the date and time of such document could also not be established. Accordingly, no contravention of the Competition Act could be established based on these.

The CCI also observed that the leniency applicants did not provide sufficient details and material particulars in support of the averments made by them in their leniency applications.

### **Conclusion**

The CCI concluded that the nature of evidence presented by the DG and the leniency applicants were insufficient and no case of contravention could be made out against the bearings manufacturers; and directed closing of the investigation.

All leniency applications may not necessarily lead to the imposition of pecuniary penalties upon defendants of such applicants. Since the order of the CCI was not passed in terms of Section 27 of the Competition Act, no right of appeal before the appellate tribunal is available to any party under the Competition Act.

Khaitan & Co successfully represented one of the bearings manufacturers before the CCI in the matter.

- *Manas Kumar Chaudhuri (Partner), Sagardeep Rathi (Partner), Pranjal Prateek (Partner), Aman Singh Baroka (Senior Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)