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CCI FINDS BEARINGS MANUFACTURERS IN CONTRAVENTION OF THE COMPETITION ACT

11 June 2020

On 5 June 2020, the Competition Commission of India (CCI) in disposing of *Suo Motu* Case No 05 of 2017 concluded that National Engineering Industries Limited (NEI), Schaeffler India Limited (Schaeffler), SKF India Limited (SKF) and Tata Steel Limited, Bearing Division (Tata) had contravened provisions of Section 3(3)(a) read with Section 3(1) of the Competition Act, 2002 (Competition Act).

The case was initiated and instituted by the CCI in terms of an application dated 26 June 2017 filed by Schaeffler, disclosing cartel conduct in the domestic automotive and industrial bearings market under Section 46 of the Competition Act read with the Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 (LPR) (this application is also popularly known as “Leniency Application”). Schaeffler, in its Leniency Application, disclosed the cartel conduct amongst NEI, SKF, Schaeffler, Tata and Timken India Limited (Timken).

The CCI, based on the Leniency Application of Schaeffler, formed a *prima facie* view under Section 26(1) of the Competition Act and directed the Director General, CCI (DG) to investigate the matter and submit an investigation report. During the course of the investigation by the DG, NEI also filed a Leniency Application before the CCI.

The DG conducted a detailed investigation and found cartelisation amongst NEI, Schaeffler, Tata and SKF during the period from November 2009 to January 2011. The DG did not, however, find any evidence against Timken. The DG concluded that the competitors met and shared confidential information with an intent to achieve higher profits.

Pursuant to submission of the investigation report of the DG, the CCI allowed all the parties to submit responses and appear before it for oral arguments. The CCI, based on the investigation report and arguments of the parties, concluded that NEI, Schaeffler, Tata and SKF attended two in-person meetings and had telephonic conversations on various occasions to determine the prices of the bearings being sold to the original equipment manufacturers.

The CCI held that the individuals, who attended two meetings with competitors, when confronted by the DG, admitted having attended them. As such, the CCI found this evidence to be enough to establish a cartel under the Competition Act. The CCI finally concluded that once agreements are established under Section 3(3) of the Competition Act, it would be presumed to have caused an Appreciable Adverse Effect on Competition (AAEC) within India.

The parties could not rebut the presumption of AAEC leading to the conclusion of cartel against NEI, Schaeffler, SKF and Tata. The CCI also found certain individuals of these companies liable under Section 48 of the Competition Act. The CCI relied upon one of the landmark decisions of the Supreme Court of India in *Rajasthan Cylinders and Containers Limited v Union of India and Others*, 2018 (13) SCALE 493 concluding the inquiry, stating that once an agreement between competitors is found in breach of the Competition Act, AAEC is presumed within India and hence cartel between competitors is proved. The CCI directed all the parties and the individuals who were responsible for or contributed to the cartel to cease and desist from indulging in such anticompetitive practices in the future.

Khaitan & Co (KCO) represented Schaeffler in the present matter and was involved in filing the Leniency Application on behalf of Schaeffler. KCO also appeared and argued before the CCI on behalf of Schaeffler.

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