

Findings, Opinions and Orders

IN THE MATTER OF

THE CLOROX COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2975. Complaint, July 2, 1979 — Decision, July 2, 1979

This consent order, among other things, requires an Oakland, Calif. manufacturer of household cleansers, detergents, bleach, specialty food products and charcoal briquets to cease misrepresenting characteristics, properties, quality or use of any cleanser; to cease advertising any of the above without first having in their possession documentation supporting their claims; to cease failing to maintain adequate records of substantiation documentation; and to cease failing to disclose precautionary measures specified in the order.

Appearances

For the Commission: *Jeffrey A. Klurfeld.*

For the respondent: *James O. Cole, Oakland, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Clorox Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent The Clorox Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1221 Broadway, Oakland, California.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale and sale of household cleansers and detergents, bleach, specialty food products, and charcoal briquets. Sales by respondent for fiscal year 1978 exceeded \$1 billion.

PAR. 3. Respondent maintains, and has maintained a substantial course of business, including the acts and practices as hereinafter set

forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In 1976, respondent introduced a new household cleanser, marketed under the name "Soft Scrub." Soft Scrub was allegedly formulated to effectively clean the following surfaces which would otherwise be abraded and scratched if cleaned with scouring powder: formica, fiberglass, plastic, stainless steel, ceramic tile, chrome, appliance enamel, porcelain and aluminum. Approximately 50% of household surfaces are composed of these materials.

PAR. 5. Since its introduction, Soft Scrub has enjoyed great success. It is estimated that approximately 8,000,000 American households use the product.

PAR. 6. In marketing Soft Scrub, respondent affixed labels to containers thereof that represented directly or by implication that Soft Scrub could be safely used on appliance enamel without risk of substantial abrasion or scratching. Among the other surfaces on which Soft Scrub was recommended were plastic and fiberglass.

PAR. 7. In truth and in fact, Soft Scrub cannot be used on appliance enamel, plastic and fiberglass without risk of substantial abrasion and scratching thereto, unless certain precautionary measures are taken. These measures involve the type of applicator used, the quantity of product used, and the degree of pressure applied in cleaning.

Therefore the representations set forth in Paragraph Six concerning appliance enamel, plastic and fiberglass were, and are, unfair or deceptive acts or practices.

PAR. 8. Through the use of the representations set forth in Paragraph Six concerning appliance enamel, plastic and fiberglass, respondent has represented, directly or by implication, that at the time it made said representations, it possessed and relied upon a reasonable basis for making the representations.

PAR. 9. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making the representations set forth in Paragraph Six concerning appliance enamel, plastic and fiberglass.

Therefore the representations set forth in Paragraph Six concerning appliance enamel, plastic and fiberglass were, and are, unfair or deceptive acts or practices.

PAR. 10. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the manufacture, advertising, offering for sale and sale of merchandise of the same general kind and nature as merchandise sold by respondent.

PAR. 11. The use by respondent of the aforesaid false, misleading and

deceptive statements, representations, acts and practices, directly or by implication, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 12. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged are continuing, and will continue, in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Clorox Company is a corporation organized, existing and doing business under and by virtue of the laws of the

State of California, with its office and principal place of business located at 1221 Broadway, in the City of Oakland, State of California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For the purposes of this order, the following definition shall apply: "Cleanser" is defined as "Soft Scrub," or as any other product with the same or similar chemical formulation which is manufactured, offered for sale or sold by The Clorox Company.

It is ordered, That respondent The Clorox Company, a corporation, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labelling, offering for sale, sale or distribution of any "cleanser," as hereinabove defined, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I

1. Misrepresenting, directly or by implication, any characteristic, property, quality or use of any cleanser.

2. Representing, directly or by implication, any characteristic, property, quality or use of any cleanser unless prior to the time such representation is first made, respondent possesses and relies upon a competent and reliable scientific test or tests or other objective data which substantiate such representation.

3. Failing to maintain accurate and adequate records which may be inspected by Commission staff members upon reasonable notice of all documentation in substantiation of any representation regarding any characteristic, property, quality or use of any cleanser.

4. Failing to clearly and conspicuously disclose (in print of a size and type no less prominent than the majority of the text) the following statement, with nothing to the contrary or in mitigation thereof, on any label affixed to any bottle or other container of any cleanser that is intended for retail sale:

ATTENTION: To prevent scratching fiberglass, plastic, and appliance enamel on refrigerators, dishwashers, oven doors and on other appliances: **USE SPARINGLY: AND RUB GENTLY WITH A DAMP SPONGE.**

5. Other than on any label affixed to any bottle or other container of any cleanser, failing to clearly and conspicuously disclose the

Decision and Order

following statement, with nothing to the contrary or in mitigation thereof, in any advertisement promoting the sale of any cleanser:

Use only as directed

II

It is further ordered, That respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

III

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IV

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

Complaint

94 F.T.C.

IN THE MATTER OF

SKF INDUSTRIES, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 9046. Complaint, July 22, 1975 — Final Order, July 5, 1979*

This order, among other things, requires SKF Industries, Inc. ("SKF") and Federal-Mogul Corporation ("FM"), two bearings manufacturers, to cancel their December 17, 1974 by-sell agreement whereby SKF agrees to cease distribution of certain bearings to the automotive aftermarket in exchange for FM's agreement to purchase its tapered roller bearings requirements from SKF, and other similar arrangements between them. The order prescribes specific limitations on FM's purchases of tapered roller bearings from SKF for 12 years following the effective date of the order, and requires the companies to notify their sales and policy-making staff of the terms of the order. Additionally, twice annually for each of two years, respondents are required to publish those terms in two major trade journals.

Appearances

For the Commission: *K. Keith Thurman, John R. Hoagland, Rhett R. Krulla and Annthalia Lingos.*

For the respondents: *Larry L. Williams and Robert J. Pope, Clifford, Glass, McIlwain & Finney, Washington, D.C. for SKF Industries, Inc., Fred W. Freeman and Kenneth J. McIntyre, Dickinson, Wright, McKean, Cudlip & Moon, Detroit, Mich. for Federal-Mogul Corporation and Haliburton Fales, 2d, Peter J. Dias and Alan L. Morrison, White & Case, New York City for Aktiebolaget SKF.*

COMPLAINT

The Federal Trade Commission, having reason to believe that SKF Industries, Inc. and Aktiebolaget Svenska Kullagerfabriken, corporations subject to the jurisdiction of the Commission, have violated 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 that Federal-Mogul Corporation, a corporation subject to the jurisdiction of the Commission, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45) and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges as follows:

I. DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply:

(a) "Bearings" are nonminiature machine parts which bear the friction occasioned when parts are in contact and have relative motion and which employ either balls or rollers as the moving elements. [2]

(b) The term "automotive aftermarket" includes all sales for replacement use directly to automotive wholesalers or retailers, other than vehicle dealers.

(c) The term "automotive" refers to parts having application on selfpropelled land vehicles, including, but not limited to, automobiles, trucks, buses, tractors, selfpropelled agricultural equipment and construction equipment.

II. AB SKF

2. Aktiebolaget Svenska Kullagerfabriken (hereinafter "AB SKF") is a corporation organized and doing business under the laws of the Kingdom of Sweden since 1907, with its principal place of business at Gothenburg, Sweden.

3. AB SKF had sales of approximately \$1 billion in 1971 and assets of \$1.4 billion at the end of that year. In 1971, 85% of AB SKF's sales consisted of bearing sales, making it the world's largest manufacturer of bearings, with a 22% market share of bearings sold outside Communist countries.

4. Since its inception in 1907, AB SKF has expanded aggressively both by internal development and acquisitions. The Swedish corporation now has subsidiary or affiliate corporations in the United States, United Kingdom, France, Germany, Holland, Canada, Brazil, India, South Africa, Italy, Argentina, Spain, Australia and New Zealand. By 1971, AB SKF owned 16 manufacturing companies with 66 factories and maintained sales offices in practically all countries.

5. In 1915, AB SKF established a ball bearing plant in the United States. Until 1933, this plant was operated by the SKF Ballbearing Company of Hartford, Connecticut. On December 13, 1933, SKF Industries, Inc. (hereinafter "SKF") was incorporated under Delaware law as a successor to the SKF Ballbearing Company. In 1973, AB SKF held the beneficial ownership in approximately 94% of the capital stock of SKF. [3]

6. In 1965, AB SKF acquired controlling interest in RIV Officine di Villar Perosa S.p.A. (hereinafter "RIV"), an Italian producer of ball, taper roller (hereinafter "TR") and other bearings. Prior to its

acquisition by AB SKF, RIV sold ball and TR bearings in the United States.

7. AB SKF and several of its European affiliates export finished bearings and parts to the United States. Sales in the United States are made by AB SKF not only through SKF but also directly by AB SKF or its foreign subsidiaries. SKF Group shipments of bearings to the United States were approximately \$5.5 million in 1972.

8. At all times relevant hereto, AB SKF and SKF sold and shipped their products throughout the United States and engaged in commerce within the meaning of the Clayton Act, as amended, and were corporations whose businesses were in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

III. SKF INDUSTRIES, INC.

9. SKF is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at Front St. and Erie Ave., Philadelphia, Pennsylvania.

10. SKF is the nation's third largest manufacturer of bearings, with net sales of approximately \$126 million in 1971. In that year, SKF held assets in excess of \$113 million and realized a net income of approximately \$1.48 million. SKF does not and has not engaged in the sale of significant quantities of any product other than bearings, almost all of which were ball or TR bearings.

11. In the last twenty years, SKF has grown rapidly through several acquisitions of stock or assets, including, among others:

(a) Tyson Bearing Corporation (hereinafter "Tyson"), a Delaware corporation acquired in 1955 whose principal place of business was in Massillon, Ohio. At the time of the acquisition, Tyson was a subsidiary of Nice Ball Bearing Company, was the nation's third largest manufacturer of TR bearings, and was engaged in or its business affected commerce within the meaning of the Federal Trade Commission Act, as amended. [4]

(b) Nice Ball Bearing Company (assets acquired in 1960) (hereinafter "Nice") then a division of Channing Corporation, a corporation organized and doing business under the laws of the State of Delaware with its principal place of business in New York, New York. At the time of the acquisition Nice was a substantial manufacturer of ball bearings and was engaged in commerce within the meaning of the Clayton Act, as amended, and the Federal Trade Commission Act, as amended.

Since their acquisitions, Tyson and Nice have become and been operated as divisions of SKF.

IV. FEDERAL-MOGUL CORPORATION

12. Respondent Federal-Mogul Corporation (hereinafter "F-M") is a corporation organized and doing business under the laws of the State of Michigan, with its principal office and place of business located at 26555 Northwestern Highway, Southfield, Michigan.

13. During 1971, F-M had net sales of \$269.6 million, assets in excess of \$201 million and net earnings of \$13.3 million. F-M manufactured automotive engine parts and bearings, with the latter accounting for one-third of its 1971 net sales. In 1971, F-M was the nation's fourth largest bearing producer and the largest seller of bearings to the automotive aftermarket.

14. At all times relevant hereto, F-M sold and shipped its products throughout the United States and engaged in or its business affected commerce within the meaning of the Federal Trade Commission Act, as amended.

15. On or about July 8, 1971, F-M and SKF commenced negotiations regarding the termination by F-M of the manufacture of TR bearings with an outside diameter of 4 inches or smaller and the purchase of such bearings by F-M from SKF for resale. [5]

16. In January 1972, SKF decided to discontinue the marketing of bearings to the automotive aftermarket.

17. On or about January 11, 1972, an agreement was reached between F-M and SKF whereby SKF promised to sell TR bearings, ball bearings and other bearings to F-M for resale to the automotive aftermarket. Under this agreement F-M would supply bearings to the former SKF customers in the automotive aftermarket with SKF personnel assisting F-M in changing over such SKF customers to F-M. Such agreement has been performed according to the terms set forth in this paragraph.

VII. TRADE AND COMMERCE

18. The relevant geographic market is the United States as a whole and includes all bearings produced in the United States or manufactured abroad and imported into the United States.

19. The relevant product markets are:

- (a) the manufacture and sale of TR bearings;
- (b) the manufacture and sale of ball bearings; and
- (c) the sale of bearings direct to the automotive aftermarket.

20. Sales of ball and TR bearings in the United States are substantial. In 1971, domestic sales of TR bearings were over \$381 million and ball bearing sales were over \$523 million.

21. Concentration in the manufacture and sale of TR bearings and ball bearings in the United States has been high since 1955. In 1971, the four largest sellers accounted for the following percentages of domestic shipments:

- (a) TR bearings - 92%; and
- (b) ball bearings - 63%. [6]

22. Entry into the manufacture and sale of TR and ball bearings is extremely difficult. A successful entrant must possess both considerable technical expertise and substantial financial resources.

23. No company has successfully entered the domestic manufacture of ball or TR bearings except through acquisition since World War II.

24. Prior to its acquisition of Tyson, AB SKF through SKF was one of the few most likely entrants into the domestic TR bearing market. AB SKF and SKF had the expertise (derived in part from AB SKF's production of identical items outside the United States), resources, and distribution system to be a significant competitor in the domestic TR bearing market, and had given serious consideration to entering that market by means of internal expansion.

25. In 1955, Tyson was the nation's third largest producer of TR bearings, with sales of such bearings of \$2.95 million, accounting for 2% of total 1955 sales of TR bearings.

26. In 1958, SKF was a substantial domestic manufacturer of ball bearings with sales of \$24 million, accounting for 9.5% of the domestic ball bearing market.

27. In 1958, Nice was a substantial manufacturer of ball bearings with sales of \$6.8 million, accounting for 2.3% of total 1958 domestic ball bearing shipments of \$255 million.

28. In 1971, SKF, with TR bearing sales of \$17.6 million and ball bearing sales of \$49.6 million, accounted for 4.6% of domestic TR bearing sales and 12% of domestic ball bearing sales.

29. In 1971, F-M was the nation's second largest producer and seller of TR bearings. In that year, F-M had sales of TR bearings of \$53.2 million and accounted for 14.0% of total domestic sales of TR bearings. In that same year, F-M's sales of ball bearings were \$26.6 million, accounting for 6.3% of the domestic ball bearing market, making it the 4th largest seller in that market. [7]

30. Sales of bearings to the automotive aftermarket are substantial, with 1970 shipments of \$55.9 million. Concentration in this market

is high. In 1970, the four largest sellers accounted for 78.2% of total sales of bearings in the automotive aftermarket.

31. Entry into the sale of bearings to the automotive aftermarket is difficult. A successful seller must operate a large, sophisticated distribution system, offer products with a reputation for high quality and have ample financial resources and considerable expertise. An additional barrier to entry exists in the fact that many purchasers in the automotive aftermarket prefer to deal with a seller offering a full line of bearings rather than just a few types or sizes.

32. In 1970, SKF's sales of bearings in the automotive aftermarket were \$4.1 million, accounting for 7.3% of that market. SKF was the nation's fourth largest seller of bearings to the automotive aftermarket in 1970.

33. In 1970, F-M's sales of bearings in the automotive aftermarket were \$20.4 million, accounting for 36.5% of that market. In 1970, F-M was the nation's largest seller of bearings to the automotive aftermarket.

34. The acquisition of Tyson by SKF; the subsequent acquisition of foreign bearing companies including, among others, United Bearing Co., Ets. Rossi Freres S.A., RIV, and four Spanish bearing companies by AB SKF; and the arrangement between SKF and F-M, individually or taken as a whole, constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, in that substantial actual and potential competition between and among AB SKF (including SKF), Tyson, F-M and others in the manufacture and sale of TR bearings has been eliminated.

35. The acquisition of Nice by SKF; the subsequent acquisitions of foreign bearing companies including, among others, United Bearing Co., Kugellagerfabrik Saarland, Les Applications du Roulement, RIV, Compagnie Generale du Roulement, and four Spanish bearing companies by AB SKF; and the arrangement between SKF and F-M, individually or taken as a whole, constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, in that substantial actual and potential competition between and among AB SKF (including SKF), Nice, F-M and others in the manufacture and sale of ball bearings has been eliminated. [8]

36. The effects of the acquisition of Nice by SKF are substantially to lessen competition or tend to create a monopoly in the manufacture of ball bearings throughout the United States in violation of Section 7 of the Clayton Act, as amended, in that substantial actual competition between Nice, SKF and others in the manufacture and sale of ball bearings has been eliminated.

37. The arrangement between SKF and F-M constitutes an unfair

method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, in the following ways, among others:

(a) Substantial competition between and among SKF, F-M and others in the sale of bearings in the automotive aftermarket has been eliminated.

(b) The arrangement has eliminated F-M as a substantial potential purchaser of TR and ball bearings from manufacturers other than SKF.

INITIAL DECISION BY MORTON NEEDELMAN, ADMINISTRATIVE LAW
JUDGE

MAY 12, 1978

I.

STATEMENT OF THE CASE

The complaint in this proceeding issued on July 22, 1975. It charges that beginning in 1955, acting alone or in combination, respondents have committed various antitrust offenses both in the United States and abroad which have had the effect of reducing actual and potential competition in three domestic bearings markets — the manufacture and sale of tapered roller bearings ("TRB"), the manufacture and sale of all ball bearings, and the distribution of all bearings, including TRB, to the automotive aftermarket. Specifically, the challenged acts are:

1. A 1955 acquisition by SKF Industries, Inc. ("SKF") of Tyson Bearing Corp. ("Tyson"), a manufacturer of TRB.

2. A 1960 acquisition by SKF of Nice Ball Bearing Company ("Nice"), a manufacturer of ball bearings.

3. A series of acquisitions by Aktiebolaget SKF¹ ("AB SKF") of TRB and ball bearings manufacturers located outside of the United States. [3]

4. An "arrangement", entered into sometime during the period 1971-1974 and continuing to the present, between SKF and Federal-Mogul Corporation ("FM") relating to the manufacture and distribution of TRB and other bearings to the automotive aftermarket. This "arrangement" allegedly contemplates that SKF would continue to manufacture automotive bearings but would withdraw from distribution of bearings to the automotive aftermarket while FM would continue to distribute to the automotive aftermarket, but would withdraw from the manufacture of automotive TRB. The effects of

¹ The complaint as issued names Aktiebolaget Svenska Kullagerfabriken. The corporate name of the Swedish respondent was changed on May 31, 1977 to Aktiebolaget SKF. Tr. 1076.

this arrangement are said to be the elimination of competition between FM and SKF as well as the elimination of FM as a substantial purchaser of TRB and ball bearings from manufacturers other than SKF.

The complaint does not allege that each of the four acts cited above constitutes a distinct violation. Thus the complaint does not charge that the 1955 acquisition of Tyson standing alone violates either Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act. Instead, Paragraph 34 of the complaint states that the acquisition of Tyson, as well as the foreign acquisitions by AB SKF *and* the arrangement between SKF and FM, "individually or taken as a whole" constitute an unfair method of competition in that substantial, actual, and [4] potential competition between AB SKF, SKF, Tyson, FM, and other manufacturers of TRB has been eliminated.

Similarly, the foreign acquisitions of AB SKF are not cited as separate violations of Section 5. They are challenged as part of a pattern of anticompetitive activity by AB SKF which is said to impact adversely on domestic bearings markets by eliminating independent foreign sources which could conceivably export to the United States and compete on their own against SKF in the domestic market.

While the acquisition of Nice is charged as a separate Section 7 violation (Complaint, ¶ 36), this act, too, is linked together in Complaint Paragraph 35 with the foreign acquisitions by AB SKF as well as the SKF and FM "arrangement", and all of these acts (again, "individually or taken as a whole") are alleged to be an unfair method of competition.

Finally, the complaint charges separately (Complaint, ¶ 37) that the "arrangement" between SKF and FM constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act by reason of the elimination of substantial competition between SKF and FM in the automotive aftermarket.

SKF's answer, filed on September 26, 1975, denies all material allegations of the complaint and avers that the 1955 acquisition of Tyson was a toe-hold acquisition of a [5] failing company, and the 1960 acquisition of Nice involved a firm which did not compete against SKF. In addition, the SKF answer raises the following affirmative defenses:

1. The 1955 acquisition of Tyson and the 1960 acquisition of Nice had been investigated by the Federal Trade Commission at the time they occurred, and SKF had been informed by the Federal Trade Commission that no enforcement action was contemplated. Relying upon this "clearance", SKF spent substantial sums of money on the acquired firms during the past 20 years. Under the doctrines of

equitable estoppel or laches, the Commission may not now challenge what it has approved in the past.

2. The proposed order — divestiture of the combination of Tyson and Nice and cancellation of the “arrangement” between SKF and FM — will have adverse effects on competition in that this relief will only serve to enhance the dominant position of others in the manufacture and sale of TRB.

While not conceding that the Federal Trade Commission has either in personam or subject matter jurisdiction over a Swedish company which has made acquisitions outside of the United States, AB SKF filed an answer on September 29, 1975 which denied all the material allegations of the complaint relating to it. Later, AB SKF agreed to waive [6] all objections to personal jurisdiction for the purpose of this suit only.²

FM’s answer, filed on September 26, 1975, denied all substantive portions of the complaint relevant to it. In addition, FM raised affirmative defenses including inexcusable delay in bringing a proceeding relating to a 1972 agreement, and the claim that certain aspects of FM business were “failing companies” at the time when the so-called “arrangement” was made between FM and SKF.

In the prehearing stage, all parties were allowed some discovery, requests for admissions were answered, and stipulations were filed. Upon completion of the prehearing stage, the case-in-chief began on October 3, 1977 and was completed on October 13, 1977. The defense case was presented between November 28 and December 9, 1977. Hearings for rebuttal were held during the week of January 9, 1978. During the hearings all counsel were given full opportunity to be heard, and to examine and cross-examine witnesses.

The record was closed on January 13, 1978. Proposed findings of fact and briefs were filed by all parties on [7] February 14, 1978. Answering briefs were filed on March 1, 1978.³

After reviewing all the evidence as well as the proposed findings and briefs submitted by the parties, and based on the entire record, I make the following findings of facts:⁴

² Proposed Findings of Facts, Conclusions of Law, and Main Brief of AB SKF, p. 33.

³ By leave of the Commission, the filing date for this Initial Decision was extended from April 12, 1978 to May 12, 1978.

⁴ Proposed findings not adopted in the form proposed or in substance are rejected, as either not supported by the entire record, or as involving immaterial or irrelevant matters.

The following abbreviations are used throughout in citing to the record: “Tr.” (transcript of testimony); “CX” (complaint counsel exhibit); “RSX” (respondent SKF exhibit); “RAX” (respondent AB SKF exhibit); “RFX” (respondent FM exhibit). CX’s 1A–1Z–26, an index to complaint counsel’s exhibits, contain a description of each exhibit and the date received in evidence or rejected. The same information for respondents’ exhibits appears on RSX’s 1A–H (for SKF); RFX’s 150A–E (for FM); and RAX’s 250A–C (for AB SKF). These indices also indicate which exhibits are *in camera*. References in citations to exhibits to “No.” refer to numbered requests for admissions and answers to requests for admissions or paragraph numbers of stipulations. By the terms of my omnibus *in camera* order there is no

Initial Decision

[12] II.

FINDINGS OF FACT

The Respondents

Federal-Mogul (FM)

1. FM is a Michigan corporation whose headquarters is located at Southfield, Michigan. It manufactures and distributes a wide-range of

limitation whatever on the public use of this material in decisions written by the undersigned, the Commission, or other reviewing authorities. See "Omnibus *In Camera* Order," dated October 4, 1977. This order further provides that *in camera* exhibits are to be placed on the public record five years after the record closed — that is, on January 13, 1983.

[8] The appearances of the witnesses were as follows:

NAME	CALLED BY	TR. PAGES
Joseph F. Toot The Timken Company (Bearings Manufacturer)	Complaint Counsel ("c.c.")	399-514
H. E. Markley The Timken Company (Bearings Manufacturer)	Stipulated Testimony	496-497
Shunji Ishino NTN Toyo Bearing Manufacturing Co., Ltd. (Bearings Manufacturer)	c.c.	519-578
Thomas W. Morrison (Retired, Former Chairman, SKF)	c.c.	744-815
Paul Joseph Tracy American Koyo Corporation (Bearings Manufacturer and Importer)	c.c.	823-871
Russell S. Strickland (Retired, former Vice President and Bearings Group Manager, F-M)	c.c.	877-985
Walter P. Wieland FAG, Kugelfischer, Georg Schaefer & Co. (Bearings Manufacturer)	c.c.	998-1071
Bruce R. Paxton Hoover NSK Bearing Company (Bearings Manufacturer)	c.c.	1078-1109
[9] Frank V. Smith, Jr. Lipe Rollway Corporation (Bearings Manufacturer)	c.c.	1109-1143
Warren E. Milner (Retired, former General Manager, New Departure-Hyatt Bearing Division of General Motors Corporation)	c.c.	1166-1181
Philip B. Ziegler New Departure-Hyatt Bearing Division of General Motors Corporation (Bearings Manufacturer)	c.c.	1182-1215
Augustino Canonica RIV Officine di Villar Perosa S.p.A. (Bearings Manufacturer)	resp. AB SKF	1251-1334

(Continued)

Initial Decision

94 F.T.C.

automotive products including ball bearings and TRB, oil seals, O-rings, gaskets, and pistons. In 1971, FM's sales were \$269.6 million.⁵

2. In 1970, the Bower Division of FM ("Bower") produced TRB at

William J. Kelly Winstead Precision Ball Corporation and Former Vice President, FAG Bearings Corp. (Bearings Manufacturer and Importer)	resp. SKF	1840-1424
Philip Sutherland (Former Treasurer of Tyson)	resp. SKF	1428-1448
A. Stuart Murray (Retired, former Vice President of SKF)	resp. SKF	1449-1515
John A. McAdams SKF (Treasurer)	resp. SKF	1520-1551
[10] Henry M. McAdoo (Retired, former President, Nice Ball Bearing Division of SKF)	resp. SKF	1556-1608
Joseph A. Heron SKF (Assistant Treasurer)	resp. SKF	1608-1686
Tibor E. Tallian SKF (Vice President, Technology Services)	resp. SKF	1637-1681
Shaun F. O'Malley Price Waterhouse & Company (Retained Expert)	resp. SKF	1775-1906
Fred H. Meyer and Leonard J. Brzozowsky Cresap, McCormick and Paget, Inc. (Retained Experts-Joint Appearance)	resp. SKF	1944-2039
Thomas F. Russell FM (Chairman and Chief Executive Officer)	resp. FM	2050-2218
William Webster FM (Vice President and Group Executive, World Wide Marketing Group)	resp. FM	2270-2294
[11] Raymond Peck FM (Automotive Aftermarket Sales Manager, World Wide Marketing Group)	resp. FM	2400-2431
Donald R. Potter FM (Director of Pricing, World Wide Marketing Group)	resp. FM	2436-2536
Richard F. Harrington Aetna Bearings Company (Bearings Manufacturer)	c.c. (on rebuttal)	2547-2579
W. Stewart Johnson Brenco, Inc. (Bearings Manufacturer)	c.c. (on rebuttal)	2672-2718
Stephen R. Nelson Economist Federal Trade Commission (Expert Witness)	c.c. (on rebuttal)	2733-2868

two plants located in Detroit, Michigan (the Shoemaker and Hart plants) and a plant located in Macomb, Illinois.⁶ The circumstances surrounding the closing of the Shoemaker and Hart plants are among the central issues of this proceeding.

3. FM currently has two TRB plants. In 1974, a TRB plant came on stream in Hamilton, Alabama. This plant manufactures TRB having an OD (outer diameter) of 4" to 8", and as of 1977 produces low-volume TRB in the 0" to 4" [13] range.⁷ FM continues to manufacture TRB at the Macomb, Illinois plant. This plant produces TRB having an OD of 8" or over as well as straight roller bearings.⁸

4. At all times relevant to this case FM sold and shipped bearings throughout the United States and engaged in or its business affected commerce within the meaning of the Federal Trade Commission Act.⁹

Aktiebolaget SKF (AB SKF)

5. AB SKF is a Swedish corporation founded in 1907. Its principal place of business is located in Gothenburg, Sweden.¹⁰

6. In 1971, worldwide sales of AB SKF, including subsidiaries and affiliates, were over \$1 billion. Of this total about 80 percent was derived from the sale of bearings.¹¹ [14]

7. AB SKF is the world's largest bearing producer (it accounts for over 20 percent of the world market) and worldwide it is one of the three leading TRB producers.¹²

8. AB SKF has owned or partially-owned affiliates producing TRB or ball bearings in Europe, South America, Africa, India, Australia, New Zealand, and the United States.¹³

9. AB SKF's United States affiliate, respondent SKF, is engaged in commerce and its business affects commerce.¹⁴ In addition, AB SKF's foreign affiliates export bearings to the United States and thus the Swedish firm is engaged in foreign commerce with the United States.¹⁵ Moreover, as noted later in this Initial Decision, AB SKF participated in and ratified an illegal market allocation which substantially affects the commerce of the United States.¹⁶ [15]

⁶ RFX 163V; Tr. 2075-77.

⁷ CX's 250Z-37 (Nos. 196a, b); RFX 214 (p. 1) *in camera*; Tr. 2150-51, 2357.

⁸ CX's 250Z-37 (Nos. 197a, 198a), 251D (Nos. 21-22); RFX 214 (p. 1) *in camera*.

⁹ Complaint and FM Answer, ¶ 14.

¹⁰ Complaint and AB SKF Answer, ¶ 2.

¹¹ CX's 2H, S, 250Z-188 (No. 678).

¹² CX's 4G, 250Z-188 (No. 681), 250Z-188 (No. 679), 341D; Tr. 1001, 1406.

¹³ Complaint and AB SKF Answer, ¶ 4; CX's 2Z-11-13.

¹⁴ Finding 14.

¹⁵ CX's 10B-N *in camera*, 253A-U *in camera*.

¹⁶ Findings 52, 74, 85, 91, 92, 94.

SKF Industries (SKF)

10. In 1915, AB SKF formed the SKF Ball Bearing Company of Hartford, Connecticut. A successor company, SKF Industries, Inc. ("SKF"), was incorporated under Delaware law in 1933. SKF's principal place of business is located in Philadelphia, Pennsylvania.¹⁷

11. Throughout its existence SKF has been a manufacturer of bearings. Recently, however, it has diversified into other automotive products. In 1971, SKF had net sales of approximately \$126 million.¹⁸

12. Currently, SKF through its Tyson Division manufactures TRB in Massillon, Ohio and Glasgow, Kentucky. The Massillon facility manufactures TRB over 4" OD while the Glasgow plant produces TRB in 0" to 4" OD range.¹⁹

13. SKF's Nice Division manufactures ball bearings at plants located in Philadelphia and Kulpville (Lansdale), Pa.²⁰ [16]

14. At all times relevant to this case SKF sold and shipped its products throughout the United States and engaged in commerce within the meaning of the Clayton and Federal Trade Commission Acts, and was a corporation whose business affected commerce within the meaning of the Federal Trade Commission Act.²¹

The AB SKF-SKF Relationship

15. AB SKF is the beneficial owner of 94 percent of SKF's common stock.²² However, by the terms of a voting trust agreement dated April 1, 1955, AB SKF has assigned legal title to its SKF common stock to three voting trustees, each of whom is a United States citizen domiciled in the United States. All actions by trustees must be unanimous. Voting trustees may elect themselves to the SKF board and may serve as officers of the company. AB SKF, as the holder of voting trust certificates, receives dividends declared on SKF stock. The voting trust agreement, with minor changes, has continued in effect from 1955 to the present.²³ [17]

16. AB SKF's annual reports describe SKF as a member company of the AB SKF "Group",²⁴ and AB SKF's relationship with its

¹⁷ Complaint and SKF Answer, ¶¶ 5, 9; CX 250Z-184 (No. 685).

¹⁸ Complaint and Answers of SKF and AB SKF, ¶ 10; CX's 250Z-187 (Nos. 707-08), 252B (No. 13). See Finding 101 for recent acquisition by SKF of diversified auto products manufacturer.

¹⁹ CX's 250Z-27-28 (Nos. 164-65), 250Z-133-134 (Nos. 537-39).

²⁰ CX's 250Z-71 (No. 320), 250Z-134 (No. 540).

²¹ Complaint and SKF Answer, ¶ 8.

²² Complaint and AB SKF Answer, ¶ 5; CX 250Z-184 (No. 688).

²³ CX's 5A-9i; Tr. 1547. A 1976 amendment, apparently dictated by the Department of Defense for security reasons, creates special obligations on the voting trustees to avoid disclosure of classified information to AB SKF. RSX's 2A-J.

²⁴ CX 2Z-13.

subsidiaries has been described as “geocentric”.²⁵ Details of the relationship between SKF and AB SKF, however, have not been extensively explored on the record beyond evidence showing that prior to 1954 AB SKF had at one time loaned money to SKF in the form of extended payment terms for the purchase of merchandise;²⁶ SKF purchases steel from AB SKF;²⁷ SKF personnel have participated in technical exchanges with AB SKF personnel;²⁸ unnamed AB SKF officials visited the Tyson facility before [18] and after SKF’s acquisition of Tyson;²⁹ and when SKF contemplated a joint venture in needle roller bearings with a French firm called “Nadella”, AB SKF was consulted.³⁰

17. While the evidence relating to day-to-day control by AB SKF over SKF is inconclusive, the involvement of the Swedish parent in the FM-SKF “arrangement” is plainly shown on the record and is the basis for my conclusion that an order should be issued against AB SKF. See Findings 52, 74, 85, 91, 92, 94.

The Products

18. Anti-friction bearings, which are designed to reduce the friction created by a rotating load, consist of a cup which accommodates a cone. The cone is made up of rolling elements retained by a “cage”. The rolling elements, which are either balls (as in ball bearings) or rollers (as in tapered roller bearings) are the crucial determinants of the operating characteristics of the bearing.³¹ Ball [19] bearings are produced in various grades and types including radial (annular), angular contact, self-aligning, and thrust.³² The most commonly used roller bearings are tapered,³³ spherical,³⁴ and cylindrical.³⁵ Tapered roller bearings (TRB or “tapers”) are designed to absorb both vertical and horizontal loads in such applications as the front wheels of passenger cars.³⁶

19. The practices challenged in this complaint are said to take place

²⁵ CX 258B. Also see CX 416E *in camera* for reference by independent consultant to “worldwide SKF product/plant rationalization” and CX 190L for evidence of SKF’s worldwide pricing strategy. But see Tr. 2827 for indication that national divisions of AB SKF enjoy considerable organizational autonomy and CX 258B which shows that a U.S. consent decree limits the ability of AB SKF to apply multi-national concepts to SKF.

²⁶ Tr. 1547-49. SKF, however, establishes its own budget and does its own financing. Tr. 1539.

²⁷ Tr. 760-61.

²⁸ Tr. 760-61, 1653.

²⁹ CX 421C (No. 18). AB SKF provided no funds to SKF for use in acquiring Tyson or Nice. Tr. 1528-29. SKF has never been consulted by AB SKF about the parent’s foreign acquisitions. Tr. 1539-40.

³⁰ The Swedish parent’s involvement was apparently limited to offering antitrust advice.

³¹ CX’s 250E-G (Nos. 11-17); Tr. 403.

³² CX’s 376B, 377B, 392A-Z-67; Tr. 1597-98.

³³ By far the largest use of TRB is in such automotive applications as gearboxes, front wheels, and drive units. CX 2Z-6.

³⁴ Used in heavy industry applications such as mining, steel, and paper machinery. CX 2P.

³⁵ Used where heavy loads are present such as rolling mill and mining machinery. CX 2V.

³⁶ CX’s 249D-E, i, 250Z-17 (No. 130), 250Z-18 (No. 134); Tr. 429.

in three alleged markets — the manufacture of TRB (Finding 104), an all ball bearing manufacturing market (Findings 129–146), and the sale of all bearings, including TRB and ball bearings, to the independent auto aftermarket (Findings 20–22). [20]

There is no dispute between the parties that the markets for anti-friction bearings do not break down to geographic areas: all bearings markets are national in scope.³⁷

The SKF-FM “Arrangement”

The Aftermarket For Automotive Bearings

20. The so-called “arrangement” between SKF and FM relates to the distribution of all bearings to the automotive³⁸ aftermarket.

21. Various kinds of bearings are sold in the auto aftermarket — ball bearings (including clutch throw out bearings), cylindrical, needle and spherical roller bearings, and TRB.³⁹ In rank of importance, automotive TRB constitute about 40 percent of all bearings purchased by a warehouse distributor to the auto aftermarket⁴⁰ and about 90 percent of TRB used in passenger car automotive [21] applications are in the 0” to 4” outer diameter range.⁴¹ TRB sold in the auto aftermarket are standard bearings which fit all makes of domestic and foreign cars and the worldwide production of these products is interchangeable.⁴²

22. While the parties agree that there exists a bearings auto aftermarket, respondents disagree sharply with complaint counsel about how that market should be defined. As complaint counsel would have it, there exists an economically significant “independent auto aftermarket” which consists of competition at the manufacturing level for the business of independent warehouse distributors (WD’s), but does not include sales by bearings manufacturers to auto companies for resale to franchised car dealers — that is, the so-called “OE (original equipment) service market.” Respondents, on the other hand, say that sales to the OE service market must be included in one auto aftermarket because franchised car dealers — the penultimate customers in the OE service market — are in direct competition with the last commercial buyers in the WD distribution chain, that is, franchised car dealers, garages, service [22] stations, mass merchandisers, and do-it-

³⁷ Complaint and Answers of AB SKF and SKF, ¶ 18; CX 35Z–11.

³⁸ For purposes of compiling universe figures, the term “automotive” includes passenger cars, light and heavy trucks, buses, trailers, tractors, self-propelled agricultural and construction equipment, and vehicles, such as trailers and agricultural equipment, pulled by self-propelled vehicles. CX’s 35E, 250Z–133 (No. 534).

³⁹ Tr. 2752.

⁴⁰ Tr. 2861.

⁴¹ Tr. 1347, 2863.

⁴² CX’s 249J–K; see CX’s 35E, F for list of automotive applications for bearings. Tr. 2207.

yourself shops which buy from the automotive jobbers supplied by automotive WD's.⁴³

The record supports complaint counsel's position that at the manufacturing level, two distinct markets exist — one representing sales to WD's (the independent auto aftermarket),⁴⁴ the other consisting of an OE service market. The record shows the following: [23]

(a) The bearings industry, including respondents, recognizes as a distinct market the independent auto aftermarket — *i.e.*, sales to automotive WD's who, in turn, sell only to jobbers.⁴⁵

(b) Distinct prices prevail in the independent auto aftermarket which are insensitive to price changes in the OE service market.⁴⁶

(c) Industry members maintain separate sales forces for the independent auto aftermarket.⁴⁷

(d) In terms of range of products, the requirements of the independent aftermarket are different from those of the OE service market. The independent automotive aftermarket requires bearings for every make and model for which there is still a large number of registered vehicles. The OE service market needs only a few items.⁴⁸ [24]

(e) OE service customers — the automobile companies — exercise considerable buying power since they purchase not only for replacement use but also for OE installation. WD's in the automotive aftermarket are smaller firms which stock a wide variety of parts for resale to jobbers, and lack the leverage of the automobile manufacturers.⁴⁹

23. The sale of bearings (including TRB) to the independent auto aftermarket, as defined in Finding 22, is highly concentrated.

⁴³ See RSX 123 and Tr. 2365-67. See also RSX 33E. There is some disagreement, but not nearly as intense, about whether certain sales by bearings manufacturers to industrial distributors should be included. There are some anecdotal references in the record to sale by industrial distributors to automotive jobbers. See, *e.g.*, RSX 111A; Tr. 2452. But there is no real dispute that industrial distributors are a distinct group of buyers from bearings manufacturers, who handle different products (as well as a different range of products), sell at different prices, and distribute to different customers than the automotive WD's. CX's 190o-P, 250Z-9 (Nos. 105-06), 250Z-18 (Nos. 452b, c), 250Z-126 (No. 513), 250Z-127 (No. 514), 250Z-131 (No. 526); RSX's 59F, 91L; RFX 214 (pp. 32-34) *in camera*; Tr. 419-20, 917-18, 1469, 2061-66, 2151-52, 2275, 2296-97.

⁴⁴ To the extent that bearings manufacturers sell directly to jobbers and mass merchandisers these sales are included in the independent auto aftermarket. Tr. 2852. Such jobber sales have become uncommon since the 1960's when bearings manufacturers limited their automotive wholesale distribution essentially to WD's. Tr. 2119. Complaint counsel's universe also includes sales by the bearings division of auto manufacturers to WD's.

⁴⁵ CX's 200A-201F; RSX 91D; RFX 214 (pp. 33-34) *in camera*; Tr. 2209, 2425.

⁴⁶ CX 416J *in camera*; Tr. 2524.

⁴⁷ Tr. 1196, 2523-24. Parts manufacturers do not make sales by calling directly on car dealers; they always use a WD, who, in turn, relies on jobbers. Tr. 2854; see also CX 250Z-133 (No. 536).

⁴⁸ Tr. 2753-57. It has been estimated that presently a WD needs between 260 to 300 part numbers in the 0" to 4" range. Tr. 2444, 2494, 2536, 2864-65. A part number is either a cup or a cone or an assembly of cup and cone. Tr. 2449-50.

⁴⁹ Tr. 2755-56.

Initial Decision

94 F.T.C.

TABLE 1: MARKET SHARES OF SALES OF ALL BEARINGS TO THE AUTO AFTERMARKET (PERCENT)⁵⁰

	1970	1971	1972	1973	1974	1975
FM	35.4	36.2	41.8	46.5	44.7	44.8
GM (New Departure- Hyatt)	25.9	23.7	25.1	21.6	22.1	20.6
SKF	7.8	8.2	0	0	0	0
Federal Bearings (not related to FM)	7.7	8.1	8.4	7.6	6.5	7.1
L&S	8.7	7.7	8.5	8.3	9.3	10.0
Timken	6.0	6.6	7.5	7.6	9.4	11.2
Green	4.1	5.3	3.9	3.7	3.9	2.6
Li-pe- Rollway	3.8	4.1	4.3	4.2	3.6	3.1
Aetna	.6	.2	.3	.4	.5	.5

Source: CX's 215i, 254A-N (Nos. 79-99, 102-113, 120-130) *in camera*, 349A-E (Nos. 79-125) *in camera*, 351A-D *in camera*, 353A-B (Nos. 79-131) *in camera*, 423A-B; RSX's 91H *in camera*, 122B *in camera*; RFX 154 *in camera*.

[25] 24. The segment of the auto aftermarket most directly involved in this case — sales of TRB to the auto aftermarket — is even more highly concentrated than indicated in Finding 23.

TABLE 2: MARKET SHARES OF SALES OF TRB TO AUTO AFTERMARKET IN 1970 AND 1973 (PERCENT)⁵¹

	1970	1971	1972	1973	1974	1975
FM	35	48	52	55	48	45
Timken	35	24	25	23	28	31
GM (NDH) ⁵²	12	13	13	13	13	11
L&S	N.A.	8	9	7	10	12
Tyson	6	5	0	0	0	0
Others	12	2	1	2	0	1

Sources: CX's 180 *in camera*, 190M, 254C-D *in camera*; RSX's 93D *in camera*, 95E *in camera*, 105B *in camera*; RFX 154 *in camera*; Tr. 2332, 2473-74, 2518.

25. Entry into the manufacture of bearings for sale to auto aftermarket is difficult, particularly for foreign firms. The record shows the following:

⁵⁰ Total dollar sales increased from about \$52.5 million in 1970 to about \$78.2 million in 1975. See Sources cited in Table 1.

⁵¹ In 1970, total TRB sales to the automotive aftermarket were \$17 million. In 1973, total sales were \$22 million. See sources cited in Table 2.

⁵² New Departure-Hyatt Division of General Motors.

(a) Because of the small quantity and large variety of bearings involved in sales to WD's, it is uneconomical for foreign bearings manufacturers to sell in the United States auto aftermarket. Other conditions which make it virtually impossible for a foreign exporter to compete in [26] the domestic auto aftermarket are lack of a large sales force, inability to make prompt deliveries, and unstable prices resulting from fluctuating currencies.⁵³

(b) Effective aftermarket distribution requires a large sales force supported by warehouse facilities located throughout the country.⁵⁴

(c) WD's prefer to deal with a single source of bearings who not only carries a complete line of ball bearings, cylindrical bearings, needle bearings and TRB, but within each type of bearing, the supplier is expected to carry the many different part numbers required in the replacement field.⁵⁵

(d) WD's also prefer to deal with a supplier who carries products other than bearings such as gaskets, O-seals, pistons, and other automotive products.⁵⁶

26. Since 1970, there have been no new entrants into the sale of bearings to the automotive aftermarket except for Schatz Manufacturing Co. and American Koyo. In 1975, [27] Schatz had achieved only a minuscule share of sales and by 1976, this firm had been acquired by Federal Bearings (not related to FM).⁵⁷ American Koyo, a subsidiary of the large Japanese producer Koyo Seiko, has recently entered the automotive aftermarket, but its chances of success are slight.⁵⁸

The Condition of FM in the TRB OEM and TRB Aftermarket

27. In 1970, FM manufactured TRB for both the original equipment market (OEM) and the auto aftermarket.⁵⁹

28. For several years prior to 1970, FM's TRB manufacturing arm, Bower, had declining profits.⁶⁰

29. In early 1970, FM retained the Boston Consulting Group Inc. ("BCG"), an independent market analysis firm, for the purpose of examining Bower's position in various TRB markets and to suggest alternative ways to improve profitability.⁶¹ [28]

30. The BCG study, which is dated July 1970, found that The Timken Roller Bearing Co. (Timken) was dominant in several OEM

⁵³ CX's 190N, 249L, 250Z-25-26 (No. 157), 250Z-89 (No. 385), 250Z-116 (No. 477); Tr. 2191, 2782-83.

⁵⁴ Complaint and SKF Answer, ¶ 31; CX's 250Z-10 (Nos. 110-111); RSX 33C.

⁵⁵ Tr. 1422-23, 2296-97, 2299, 2536, 2865.

⁵⁶ CX 190N; Tr. 1422-23, 1470, 2283, 2296-97.

⁵⁷ CX's 254i (No. 112) *in camera*, 422.

⁵⁸ Tr. 870, 2782.

⁵⁹ Tr. 2101-03.

⁶⁰ CX 190E; Tr. 2140-41.

⁶¹ Tr. 2141-42.

TRB markets including the OEM automotive, farm equipment, and construction markets as well as the industrial aftermarket.⁶² Given its huge shares of these markets, and its low costs resulting from economies of scale, Timken was able to use selective price cuts whenever Japanese imports became a threat as was the case in the automotive OEM market for high-volume 0" to 4" TRB,⁶³ the very products manufactured by Bower's Shoemaker plant. According to BCG, Timken's costs would always be less than Bower's, Bower would never be more than marginally profitable, and even this poor performance by Bower would be at Timken's sufferance.⁶⁴

31. BCG concluded that continuation of FM's production of 0" to 4" TRB at its Shoemaker and Hart plants could [29] not be justified.⁶⁵ The profitability of the Shoemaker plant as a percentage of sales had already declined from 18.5 percent in 1964 to 5.1 percent in 1969, and BCG anticipated further declines in profitability as a result of accelerated price-cutting by Timken to meet the threat of Japanese imports of low-priced, high-volume 0" to 4" TRB.⁶⁶

32. In its July, 1970 report to FM management, BCG considered several alternatives:

(a) Bower could conceivably refocus from the automotive, farm equipment and construction equipment OEM markets and concentrate on such growth markets as the railroad, industrial or steel industry use of bearings in which FM had little or no penetration. BCG concluded, however, that the tooling expenses and the delay inherent in such a drastic change made this alternative unprofitable.

(b) Continuation in the automotive, farm equipment and construction equipment OEM and aftermarkets as the second source to Timken was considered by BCG to be an unattractive choice because this alternative required [30] extensive investment at a time when there was a strong prospect of further price-cutting by Timken to meet Japanese imports.

(c) Withdrawal of FM completely from the production and sale of TRB including termination of sales to the auto aftermarket.⁶⁷

33. On balance, BCG recommended the last alternative — complete withdrawal of FM from all aspects of the TRB market, including aftermarket distribution.⁶⁸

⁶² Timken's share of the OEM automotive, farm equipment, and construction markets was 41%. Timken's had 64% of OEM industrial sales and 84% of industrial aftermarket sales. CX 190H.

⁶³ About 90% of the U.S. TRB market is concentrated in the 0" to 4" range. CX 249J.

⁶⁴ CX's 190E, F, G, i-L, o, R-T, V, Z-Z-1.

⁶⁵ Shoemaker produced 62 high-volume 0" to 4" TRB part numbers. Tr. 2075-76. FM's Hart Avenue plant in Detroit produced low-volume 0" to 4" and over 4" TRB. CX 250Z-42 (No. 212a); Tr. 2077.

⁶⁶ CX's 190F, G, T-V.

⁶⁷ CX's 190W-Y.

⁶⁸ CX's 190Z-Z-1; Tr. 2143.

34. In Spring, 1971, a document entitled "Bower Division Strategy Plan" was prepared by FM management for the Board of Directors. This document analyzed the problems and strengths of Bower, considered various alternative plans, and reached conclusions which agreed in some parts and disagreed in others with the recommendations of BCG. Among the conclusions reached were:

(a) The production of high-volume 0"-4" TRB at the Shoemaker plant should be terminated.

(b) The Hart Avenue, Detroit, Michigan plant of Bower, where low-volume 0"-4" TRB and TRB over 4" were produced, should be closed. [31]

(c) A new plant should be constructed in the Southeast at which 4"-8" TRB would be produced.

(d) Equipment and tooling required to produce TRB in excess of 8" should be moved from the Hart Avenue, Detroit, Michigan plant to the Macomb, Illinois plant of Bower.⁶⁹

35. In still additional recommendations to FM Board of Directors made on July 27, 1971 in an "add-on study", FM management confirmed the principle recommendation made in its Spring, 1971 "Bower Division Strategy Plan" — that is, to close the Shoemaker and Hart plants. But the "add-on study" did not endorse the complete TRB withdrawal recommendation of BCG and noted, instead, the request of the auto aftermarket division that FM retain its position as a distributor of TRB to the auto aftermarket by purchasing these products from outside sources.⁷⁰

36. Eventually FM management decided to stay in the bearings auto aftermarket because it believed that the loss of TRB would seriously affect aftermarket sales of other products. This view derived from the knowledge that [32] the success of FM in the automotive aftermarket was largely attributable to its ability to offer the convenience of a "package" of products including tapered roller bearings, engine bearings, cylindrical roller bearings, ball bearings, oil seals, O-rings and pistons.⁷¹

37. A measure of the success of this package concept is shown by the ability of FM to command a premium of up to 20 percent on TRB sales since WD's prefer to deal with a single source rather than multiple suppliers of separate items.⁷²

38. Still another factor considered by FM management was the possible adverse effects on other aspects of FM's manufacturing

⁶⁹ CX's 18A-Z-26; Tr. 2144.

⁷⁰ CX's 189A-K; Tr. 2144-45. Also see CX's 191B and 341D for summary of reasons for closing the Detroit plants.

⁷¹ CX's 190N, 198B; RFX 214 (pp. 1, 35) *in camera*; Tr. 2057-58, 2282-84, 2296, 2751-52.

⁷² RFX 214 (pp. 39-40) *in camera*; Tr. 2390. One such package consists of a line of anti-friction bearings and oil seals. Tr. 2284. See also CX 255C; RFX 208.

business which might result from the loss of TRB sales. As noted in Finding 36, it had been the experience of FM's Service Division that certain groupings of different automotive aftermarket parts comprise a particularly attractive offering to WD's. Ball bearings, TRB and oil seal comprise one such offering. FM through its National Seal [33] Division was a leading manufacturer of oil seals, and, through its BCA Division, produced ball bearings. Both oil seals and bearings were profitably distributed to the automotive aftermarket by FM in 1971, and notwithstanding the closing of the Shoemaker and Hart plants continued distribution of TRB was considered to be important by FM management not only to protect its huge market share in the TRB aftermarket, but also so as to protect its profitable aftermarket sales of oil seals and ball bearings.⁷³

39. Based upon the management recommendations made on July 27, 1971, the FM Board of Directors voted to close the Shoemaker and Hart plants on October 27, 1971.⁷⁴ On the same day, FM publicly announced its decision to phase out of the OEM market for passenger car TRB within 12 to 24 months. The decision was attributed to the encroachment of foreign imports as well as entrenched domestic competition. The announcement stated that FM had "no intention of [34] abdicating its position in the passenger car tapered roller replacement market."⁷⁵

40. FM's inability to compete effectively in the manufacture of 0"-4" TRB because of foreign competition and Timken's reaction to this foreign competition has been substantiated by the United States Department of Labor. On November 12, 1973, the Department of Labor published a notice stating that the former workers⁷⁶ at FM's Shoemaker and Hart plants were eligible for adjustment assistance because the U.S. Tariff Commission had found that increased imports of TRB, resulting in large part from trade concessions, was a major factor causing unemployment.⁷⁷ [35]

The Condition of SKF in the Bearings Automotive Aftermarket

41. SKF's Automotive Products Division (APD), its auto aftermarket distribution arm, was created in 1962.⁷⁸

42. APD offered a single line of products, bearings, for distribution

⁷³ RFX 214 (pp. 1, 24) *in camera*; Tr. 2073. See also CX's 238-243.

⁷⁴ RFX's 202A-C; Tr. 2138, 2147.

⁷⁵ CX's 191D, 250Z-108 (Nos. 453a, b), 265A-C. The announcement also stated that the decision would result in an extraordinary, one-time write-off, net of taxes, of \$10 million, equivalent to \$1.81 a share. Later, an additional \$5 million was written off. In effect, FM's shut down of its Detroit TRB plants meant it was giving up about \$20 million in annual OEM sales. CX 327A; Tr. 2147-48.

⁷⁶ The closing of the Shoemaker and Hart plants resulted in a lay-off of some 1900 Detroit workers. Tr. 2147.

⁷⁷ RFX's 165A-B. See also CX's 249Q, W, 341D.

⁷⁸ CX 250Z-104 (Nos. 438b, c).

in the automotive aftermarket. The APD line consisted of clutch release bearings and front wheel ball bearings manufactured by SKF's Nice division, and TRB manufactured by both the SKF Tyson division and SKF's parent, AB SKF. However, less than one-half of APD's TRB requirements were supplied by Tyson. APD's major outside source of TRB was FM — that is, before FM itself discontinued the manufacture of 0" to 4" TRB. APD also distributed needle roller bearings and cylindrical roller bearings.⁷⁹

43. APD's sales grew from \$803,972 in 1962 to \$4,582,247 in 1971. In 1971, APD consisted of a general manager, five district managers, and fifteen salesmen.⁸⁰ APD had six warehouses from which it served its customers.⁸¹ [36] APD's sales consisted of 20 percent TRB, 40 percent clutch throwout bearings, and the balance in other ball bearings and other parts.⁸² APD sold to large WD's, small WD's, and jobbers.⁸³

44. In 1971, APD and FM's aftermarket distribution division (Service Division and later World Wide Marketing) were competitors in the sale of bearings to the auto aftermarket.⁸⁴

45. Prior to 1971, APD had a record of poor performance. This was mainly attributable to the limited product line it had available in a market in which buyers prefer to deal with as few sources as possible.⁸⁵ As a result, APD had losses in each of the years 1965 to 1970.⁸⁶

46. In 1971, however, APD showed a profit.⁸⁷ An SKF study conducted during the negotiations over the [37] "arrangement" with FM (which eventually led to the shut down of APD) found:

APD has been gradually expanding shipments and decreasing the ratio of selling expenses to sales over the past few years and is now showing a small profit. If APD were discontinued, any decision in the future to re-enter this market would entail a similar long period of loss years to build up the division.⁸⁸

The Development of the FM-SKF Arrangement

47. Since it became apparent by mid-1970 that the future of FM's TRB manufacturing arm was bleak (see Finding 30), FM began to consider possible alternative sources of supply as early as February 1971. The search by FM for an adequate source of supply of TRB for the auto aftermarket distribution was influenced by the requirement

⁷⁹ CX's 250Z-129-30 (Nos. 520-24); Tr. 1468-71, 2463-66.

⁸⁰ CX 250Z-104 (No. 441).

⁸¹ Tr. 2369, 2409.

⁸² Tr. 2473-74.

⁸³ Tr. 2411, 2423.

⁸⁴ CX's 45B, 260A, 261C; Tr. 2405, 2470.

⁸⁵ Tr. 1470-71.

⁸⁶ RSX 80A.

⁸⁷ RSX 80A. These 1971 results tend to undermine the reliability of a 1970 SKF study which predicted APD losses in the foreseeable future. RSX 62.

⁸⁸ CX 45B.

that a company servicing the TRB automotive aftermarket maintain an inventory which includes a wide range of slow-moving items, as well as a stock of the popular high-volume parts. Accordingly, in order to compete effectively a TRB automotive aftermarket supplier must make supply arrangements which assure a reasonably full line of TRB.⁸⁹ [38]

48. Beginning in March 1971, one possibility actively considered by FM as a source of TRB was a joint venture in the United States with the Japanese producer Koyo Seiko.⁹⁰

49. As noted in Finding 34, in Spring, 1971, Bower management endorsed the BCG recommendation that the Shoemaker and Hart plants be closed.

50. At about the same time (April 1971) FM began to consider Timken and General Motors as possible "outside" sources of supply. Discussion with Timken ended when on advice of its counsel, Timken refused to supply any TRB.⁹¹ Also in Spring, 1971, General Motors' New Departure-Hyatt Division concluded that it could only supply FM on an emergency basis since its limited capacity was needed for captive use.⁹²

51. Sometime prior to May 1971, officials of SKF heard industry rumors that FM intended to withdraw from the production of 0"-4" TRB but that it was going to remain in aftermarket distribution.⁹³ [39]

52. On or about May 13, 1971, at a meeting of the Anti-Friction Bearing Manufacturers Association ("AFBMA"), FM's MacArthur⁹⁴ discussed with SKF's A. Stewart Murray⁹⁵ and James H. Sutherland⁹⁶ the line of automotive bearings then available through SKF. These discussions were initiated by FM. FM indicated its interest in obtaining from SKF for aftermarket distribution TRB in the 0" to 4" range which it no longer intended to manufacture. SKF said it was interested in supplying these TRB to FM. SKF knew that it would have to rely on AB SKF's European production for many of the TRB needed by FM, and SKF's dependence on AB SKF production was assumed by both parties at every stage of the negotiations between FM and SKF.⁹⁷ [40]

⁸⁹ Tr. 2536, 2364-65. FM's assessment of the range of TRB required for the auto aftermarket has varied with time. As matters now stand FM apparently can get by with 259 TRB parts. Tr. 2356-57. See also CX's 13A, 255A. In 1971, the minimum number was reduced from 300 to 600. Tr. 2356-57, 2443-44.

⁹⁰ Tr. 2124-26.

⁹¹ Tr. 496-97, 2154-56.

⁹² Tr. 1203-04, 2156-57. In December 1971, American Koyo appeared to be reluctant to bid for FM's low-volume auto TRB although the high-volume business was attractive. CX 331A.

⁹³ Tr. 772, 803-04.

⁹⁴ MacArthur was Chief Executive Officer between 1970-75. Tr. 2052, 2116.

⁹⁵ Executive Vice-President and director of sales, marketing, and engineering. CX 258A; Tr. 1451.

⁹⁶ Vice-President and director of distributor sales. CX 98.

⁹⁷ CX's 35K, 53F-S, 105, 115A, 250Z-135 (Nos. 541b, c), 250Z-160-61 (No. 630), 352G, (No. 70); Tr. 2159, 2169-70, 2335, 2477, 2479. See also Tr. 809 for description of limited range of SKF line. The limits of SKF's line were well-

53. Also sometime in May 1971, officials of Koyo Seiko and FM met in Florida and came to a general agreement about the kinds of parts, division of ownership, and management of a United States joint venture involving the two firms. It was contemplated that the joint venture would assemble and finish high-volume 0" to 4" TRB and ball bearings from components provided by FM or Koyo Seiko or some third-party source depending upon lowest cost.⁹⁸ FM believed that the economies of scale resulting from the joint venture, together with the provision for low-cost acquisition of components, would result in lower costs than the cost of producing the same parts in FM's own plants.⁹⁹

54. Shortly after the May AFBMA meeting with SKF, in June 1971, FM officials internally assessed their alternatives (when they closed the Shoemaker and Hart plants) as follows: [41]

(a) Sourcing its aftermarket needs for certain popular 0"-4" TRB through a joint venture with the Japanese firm, Koyo Seiko.

(b) Importing 0"-4" TRB from sources outside the United States.

(c) Sourcing 0"-4" TRB with SKF, GM or Brenco.

(d) Selling only TRB over 4" OD.

(e) Abandoning all roller bearing sales, including auto aftermarket sales.

(f) Closing down FM's field warehouses.

(g) Adding other products to be sold by FM's aftermarket operations.¹⁰⁰

55. On June 3, 1971, Russell¹⁰¹ of FM sent officials of Koyo Seiko a rough draft of a letter of intent for the creation of the joint venture to be known as FMK, Inc. It was proposed that FMK, Inc. would produce high-volume 0" to 4" TRB only.¹⁰² [42]

56. On June 19, 1971, Peck, who had responsibility for FM's Service Division sales to the domestic auto aftermarket,¹⁰³ recommended to FM's management that it source at least some of their 0" to 4" TRB needs with SKF. The reasons cited were:

known at FM since FM had supplied TRB to SKF prior to the closing of the Detroit plants. CX 35Y-Z; Tr. 2322, 2462-66. In contrast, AB SKF had a relatively complete range of bearings available from its European and other foreign plants. CX 250Z-78 (No. 328c).

⁹⁸ CX's 202A-C; Tr. 2127-28. The proposed venture would produce a maximum of seven part numbers. Tr. 2131. It has always been the pattern of the TRB industry that a few standard items account for most of the business. CX 250Z-24 (Nos. 151a, b). Thus in 1973 eight part numbers (4 cups, 4 cones) accounted for 84% of all 0" to 4" TRB imported from Japan and 38% of all 0" to 4" domestically consumed. RFX's 158U, V. Of all 0" to 4" TRB sold to the auto aftermarket, 30 part numbers represent about 60% of the dollar sales volume. Tr. 2530-31. These popular TRB part numbers are used globally in all makes of cars. Tr. 2289.

⁹⁹ Tr. 2128.

¹⁰⁰ CX's 259A-B.

¹⁰¹ Between 1970-1975, Russell was the second ranking officer of FM. Since 1975 he has been Chief Executive Officer. Tr. 2052, 2117.

¹⁰² CX's 203A-F; Tr. 2416, 2330.

¹⁰³ CX 184; Tr. 2403.

This would be our first choice with regards to the anti-friction line. We [FM] would become SKF's marketing arm to the automotive aftermarket. This would be more palatable to all of our distributors and I could see some business gained by taking over SKF's existing customers.¹⁰⁴

57. On July 1 and 2, 1971, FM met with Koyo Seiko to review the joint venture proposal.¹⁰⁵ In a letter of intent dated July 2, 1971, FM again outlined the purpose of the joint venture — *i.e.*, initially to assemble the highest volume TRB — and set forth details relating to the number of shares, percent of ownership, the proposed name of the company (FMK, Inc.), management responsibility, [43] the financial support to be provided by each joint venture partner, restrictions on the disposition of each partner's share, and profit goals. The proposal as drafted by FM was approved by Koyo Seiko.¹⁰⁶

58. A meeting between SKF and FM took place in Detroit, Michigan, on July 8, 1971, and involved FM's MacArthur, Russell, Webster,¹⁰⁷ and Potter¹⁰⁸ and SKF's Murray and Sutherland. FM again informed the SKF officials that FM was considering closing its Hart and Shoemaker plants in Detroit, but that it intended to remain in the TRB automotive aftermarket provided a satisfactory source for these bearings could be found. There was a discussion of SKF as a possible source of supply, with emphasis on sizes and quantities which SKF could offer.¹⁰⁹

59. On July 9, Peck of FM's aftermarket distribution arm repeated his endorsement of SKF as a source of supply and added: [44]

In fact there would be definite pluses here. If SKF discontinued sales to the automotive aftermarket we would enjoy approximately \$3,000,000 to \$4,000,000 in additional sales of the Bower line. It would also open the door to customers we do not sell, such as American Parts System.¹¹⁰

60. Also, in June or July 1971, SKF officials (Murray, Sutherland, and Morrison) discussed the connection between FM taking over the APD accounts, and SKF supplying bearings to FM for aftermarket distribution.¹¹¹

61. As noted earlier, on July 27, 1971, FM management, in an "add-

¹⁰⁴ CX 259A. This June 19 memo also indicates that the proposed joint venture with Koyo Seiko would have been an acceptable alternative as a source of high-volume TRB. ("... I do not feel we would have a problem integrating these [Japanese] numbers into our anti-friction and seal package"). CX 259A; see also Tr. 2416.

¹⁰⁵ CX's 204, 205A-E; Tr. 2128-29.

¹⁰⁶ CX 206A-D. See also FM's draft of joint venture agreement. CX's 207A-Z-25.

¹⁰⁷ Since 1969 Webster has been in charge of all operations of the FM Service Division which includes sales to the auto aftermarket. CX 185; Tr. 2272.

¹⁰⁸ Since 1968 Potter has held a variety of high-ranking jobs in the Service Division of FM. Tr. 2436-42.

¹⁰⁹ CX's 35Z, 250Z-135 (Nos. 542-43); Tr. 1475-76, 2160, 2321.

¹¹⁰ CX 261C. American Parts System, a former account of APD, is a major WD chain and one of the largest purchasers of bearings among WD's. Tr. 2369; see also CX's 56A-o. For proof of the special importance attached to this account by FM see CX's 54A-55C; Tr. 2343.

¹¹¹ Tr. 773, 806-07.

on study" to its April, 1971 submission, recommended to its Board of Directors that it approve the closing of FM's 0" to 4" TRB production facilities and that 0" to 4" TRB be purchased from an outside source.¹¹²

62. At a meeting in Philadelphia on September 2, 1971, involving FM's Russell and Webster and SKF's Murray and Sutherland, the matter of SKF becoming a source of TRB [45] for FM was discussed in detail. As a result of these discussions, Russell felt that he had "some assurance" that SKF would sell a line of 0" to 4" TRB to FM.¹¹³ In addition, there was a discussion of SKF supplying automotive ball bearings to FM for aftermarket distribution.¹¹⁴

63. During the September 2 meeting, the SKF and FM officials also discussed APD's problems.¹¹⁵ SKF asked FM to assist SKF in the preparation of APD's parts catalogue, a substantial cost to SKF which could be reduced through use of FM's data. FM eventually refused to provide this service to a competitor.¹¹⁶ As part of the September discussion, apparently SKF and FM considered the desirability of FM taking over the APD accounts since Webster's notes of the September 2, 1971 meeting contained the following:

Followup on combining APD-FMS [FM Service Division] — around October 1st.¹¹⁷

[46] 64. After the September 2, 1971 meeting, FM submitted a letter to SKF which stated that FM had asked SKF if SKF would quote on certain high-volume TRB.¹¹⁸

65. Also following the September 2, 1971 meeting with FM officials, SKF officials commissioned a study to consider the relative profit to be had in selling to FM as compared to continuing the APD operation. The study, which was completed on December 20, 1971, concluded that it might be more profitable for SKF if FM took over APD's customers, and SKF sold bearings to FM for aftermarket distribution.¹¹⁹

66. In September and November 1971, FM officials continued to meet with Koyo Seiko representatives. The Koyo Seiko representatives were told that the joint venture was still being considered.¹²⁰

67. On October 27, 1971, FM announced the closing of its Shoemak-

¹¹² Finding 35.

¹¹³ Tr. 2163.

¹¹⁴ Tr. 2324.

¹¹⁵ Tr. 2161-67, 2325.

¹¹⁶ Tr. 2470.

¹¹⁷ CX 263; Tr. 2324. See also Tr. 807.

¹¹⁸ CX 102.

¹¹⁹ CX's 45A-C; Tr. 774-75. The relative profitability of selling through FM is dependent, of course, on the sale price which is subject to negotiation. CX's 45A-B, 49A-C; Tr. 775, 1538.

¹²⁰ Tr. 2131-32.

