



PEUGEOT S.A. AND OTHERS

Claimants

-v-

(1) NSK LTD.
(2) NSK EUROPE LTD.
(3) NTN CORPORATION
~~(4) JTEKT CORPORATION~~
(5) AB SKF
~~(6) INA HOLDING SCHAEFFLER GMBH & CO. KG~~
~~(7) SCHAEFFLER HOLDING GMBH & CO. KG~~
~~(8) SCHAEFFLER AG~~

Defendants

ORDER

UPON HEARING Counsel for the Claimants and Counsel for the Defendants at a case management conference on 12 January 2017

AND HAVING REGARD TO the Tribunal's powers under the Competition Appeal Tribunal Rules 2015 (the "**Tribunal Rules**")

IT IS ORDERED THAT:

Disclosure

1. Unless otherwise stated, the documents and data to be disclosed pursuant to this Order are those relevant to the period 8 April 1999 to 31 December 2016 to the extent available (the "**Relevant Period**"), and to purchases of automotive bearings (including automotive bearings components) within the EEA.
2. Insofar as any party intends to use electronic search terms as part of the disclosure ordered below, they shall endeavour to agree the terms with the other parties, and shall in

any event (if agreement has not proved possible) inform the other parties of the terms to be applied by 4pm on 10 February 2017.

3. By 4pm on 27 January 2017:
 - (a) each Defendant (the First and Second Defendants being treated as one Defendant for these purposes) shall identify in correspondence two sample Requests for Quotation (“RFQs”); and
 - (b) the Claimants shall identify in correspondence six sample RFQs, being two sample RFQs in relation to each of the Defendants or their group companies.
4. By 4pm on 13 February 2017 the Claimants shall file and serve a witness statement as described in paragraph 8 of Annex B.
5. By 4pm on 28 February 2017:
 - (a) each Defendant shall provide disclosure of the documents identified in paragraph 8 of Annex A;
 - (b) the Claimants shall provide disclosure of the documents identified in paragraph 7 of Annex B; and
 - (c) the parties shall endeavour to agree whether disclosure should be given by the Claimants of documents evidencing the reasons for price renegotiations and other amendments to contracts between the Claimants and the Defendants; and if so, as to the scope and timetable of such disclosure.
6. By 4pm on 17 March 2017, the parties shall endeavour to agree whether disclosure in relation to further RFQs should be made of the types of document identified in paragraph 8 of Annex A and paragraph 7 of Annex B; and if so, how many additional RFQs each party should identify; and on what timetable such disclosure should be given.
7. By 4pm on 31 March 2017:
 - (a) each Defendant shall provide disclosure of any data/documents set out in Annex A insofar as they have not already been disclosed by the Defendants; and
 - (b) the Claimants shall provide disclosure of any data/documents set out in Annex B insofar as they have not already been disclosed by the Claimants.

Clean Bearings

8. By 4pm on 13 January 2017, the Defendants’ experts are to agree and provide to the Claimants a list of between 5-10 bearing applications other than automotive bearings (the “**Other Bearing Applications**”) (entirely without prejudice to its relevance or comparability to the issues in dispute, on which the Defendants expressly reserve their

positions) and the Claimants' experts shall have the opportunity to comment, by 4pm on 20 January 2017 on the Defendants' choice of Other Bearings Applications.

9. By 4pm on 3 February 2017, the Defendants, with such input from their experts as they may deem necessary and appropriate, shall inform the Claimants in writing of the extent to which the Defendants consider the Other Bearing Applications to be comparable to automotive bearings and relevant to the matters in dispute.
10. By 4pm on 17 February 2017, the Claimants, with such input from their experts as they may deem necessary and appropriate, shall respond in writing to the Defendants, explaining whether they agree with the Defendants and, to the extent that they do not agree, shall provide their detailed reasoning as to why not.
11. Any applications for disclosure regarding the Other Bearing Applications are to be made by 4pm on 28 February 2017.

Witnesses of Fact

12. Each party will file and serve on every other party the witness statements of the oral evidence which the party serving the witness statements intends to rely on in relation to any issues of fact to be decided at the trial, those witness statements to be exchanged simultaneously by 4pm on 26 May 2017.
13. Each party will file and serve on every other party any witness statements in reply by 4pm on 30 June 2017.

Expert Evidence

14. By 4pm on 28 July 2017, the Claimants' expert shall file and serve a report in relation to the matters set out in paragraph 13 of the Order dated 11 October 2016.
15. By 4pm on 15 September 2017, the Defendants' experts shall file and serve their reports in response, but will liaise to avoid any unnecessary duplication.
16. By 4pm on 13 October 2017, the Claimants' expert shall file and serve a reply report.
17. Following service of the Claimants' expert's reply report, the parties' experts shall meet in accordance with paragraph 16 of the Order dated 11 October 2016 and shall, by no later than 4pm on 10 November 2017, identify in a joint memorandum the matters set out at paragraphs 16 (a) – (c) of the Order.
18. In order to assist in the production of the joint memorandum:
 - (a) On a date to be agreed between themselves, the parties' experts are to submit a template of the joint memorandum for the Tribunal's approval;
 - (b) By 4pm on 27 October 2017, the parties' experts shall file with the Tribunal a short progress report, which it is anticipated is likely to be no more than a page in

length, stating whether good progress is being made on the production of the joint memorandum and identifying any issues which it is anticipated the Tribunal may need to resolve to assist in the production of the memorandum.

Pre-Trial Review

19. A one-day Pre-Trial Review is to be fixed for a convenient date between 15 and 30 November 2017.

Liberty to Apply

20. The parties are at liberty to apply to vary the terms of this Order.
21. The parties may agree extensions of up to 7 days for completing each of the steps referred to in paragraphs 2 to 18, including if appropriate consequential extensions to subsequent steps, without the need to apply to the Tribunal provided that they inform the Tribunal of such agreement in advance of the expiry of the relevant deadline.

Costs

22. Costs in the case.

The Honourable Mr Justice Green
Chairman of the Competition Appeal Tribunal

Made: 12 January 2017
Drawn: 26 January 2017

Annex A

Disclosure by the Defendants

For the purposes of Annex A, “Data” constitute figures and related numerical information, stored electronically in excel or equivalent format and include (but are not limited to) electronic databases. Data are to be regarded as ‘available’ if they have already been produced and/or collated for the purpose of these proceedings, or are capable of being produced and/or collated for the purpose of these proceedings on the basis of reasonable and proportionate searches.

Volume of Commerce

Sales of bearings

1. To the extent available, a transaction level dataset of sales made by the relevant Defendant to the Claimants per bearing/bearing component, derived from their EU Mistral, Cognos and SAP databases respectively (or such other sources where they may be found) together with any available information on technical specifications for the bearings/bearing components, including a breakdown of:
 - a. Volumes;
 - b. Prices; and
 - c. Value of sales.
2. To the extent available, the dataset requested at paragraph 1 above shall include details of:
 - a. the product;
 - b. the factory where the bearings/bearing components were manufactured;
 - c. the PSA plant they were sent to;
 - d. whether the values are delivered or ex-factory prices; and
 - e. whether the sale is for the main market or the aftermarket.

The information requested above shall include, to the extent possible, an explanation of the units used for the volume data and any technical specifications of the bearings/bearing components.

Overcharge

Quotations/initial contract prices

3. To the extent available, data on quotations/initial contract prices per bearing/bearing component covered in each of the contracts between PSA and the Defendants, including:

- a. contract signing dates;
- b. prices and any surcharges and duties that form part of the total quotation; and/or
- c. transaction price to be charged and/or offered by the Defendants.

The information requested above shall specify, to the extent possible, the technical specifications of the bearings/bearing components covered in the contracts.

Price amendments

4. To the extent available, data on price amendments per bearing/bearing component covered in each of the contracts between PSA and the Defendants, including:
 - a. scale of the price amendment;
 - b. type/reason of the price amendment; and
 - c. the date of the price amendment.

The information requested above shall specify, to the extent possible, the technical specifications of the bearings/bearing components covered in the contracts.

Technical specifications

5. To the extent not covered above in paragraphs 1 to 2, and to the extent available, data on technical specifications for bearings/bearing components, including:
 - a. Weight;
 - b. Bearings category;
 - c. Whether they are ball, cylindrical, needle or tapered roller bearings; and
 - d. Any other technical features and/or characteristic of the bearings item that would affect costs.

The information requested above shall specify, to the extent possible, any model-specific circumstances that may also affect the price of contracts.

Costs

6. To the extent available, data regarding the costs incurred by the Defendants in the production of bearings/bearing components supplied to the Claimants as well as expectations of future costs at the time the contract was awarded by the Claimants.

The cost data requested in this paragraph 6 includes, to the extent available, a breakdown of all key costs, including, insofar as available, all key variable costs and their

proportions, broken down by bearing/bearing component and manufacturing location, including, to the extent available:

- a. The costs of raw material inputs, such as steel or electricity;
- b. Manufacturing and carrying costs;
- c. Overheads, transport and selling costs;
- d. The relevant index used (including steel);
- e. Hedging of costs (including currency costs and steel costs)
- f. Any other relevant costs; and
- g. The basis of allocation for any allocated costs (i.e. the relevant costs drivers)

The information requested above should, to the extent available, identify the technical specifications of the bearings/bearing components covered in the contracts.

Supplier Contracts / Amendments

7. Copies of supplier contracts (including Letters of Intent/Award Letters) between the Claimants and the Defendants and, to the extent available, information on whether the contract is a new or a follow-on contract and any amendments to those contracts.
8. In respect of each RFQ identified pursuant to paragraph 3 of the Order:
 - a. The documents comprising the RFQ;
 - b. Responses sent to the RFQ;
 - c. Documents relating to the process or strategy for negotiating the final price with the Claimants.

Sales of bearings to other OEMs

9. To the extent available, and subject to encryption and anonymization (by replacing the relevant OEM's name with a generic identifier e.g. OEM A, OEM B, etc.), data in respect of sales of automotive bearings to other OEMs, including:
 - a. Sales of bearings by bearing/bearing component for each contract;
 - b. Quotations/initial contract prices;
 - c. Price amendments; and
 - d. Technical specifications for the bearing.

Annex B

Disclosure by the Claimants

For the purposes of Annex B, “Data” constitute figures and related numerical information, stored electronically in excel or equivalent format and include (but are not limited to) electronic databases. Data are to be regarded as ‘available’ if they have already been produced and/or collated for the purpose of these proceedings, or are capable of being produced and/or collated for the purpose of these proceedings on the basis of reasonable and proportionate searches.

Value of Commerce

Purchases of bearings

1. To the extent available, a contracts dataset containing records of unit price throughout the relevant contract life cycle from June 1985 to December 2016, including: article, purchasing family, description, plant code contracts, agreement date of new price, supplier code, supplier name, purchasing group, unit, contract status, order number, type, prototype, original price, original currency, price base, division, purchasing order, date of purchase order, supplier plant code, shipping supplier, purchasing number, serial reference, series aftermarket, last change date, amendment type, amendment number, amendment date, amendment reason, Incoterm, packaging code, shipping terms, packing instruction, quantity per package, amount of packaging per unit, new packaging by quantity unit, new price, new currency, new unit, amendment unit, indexing coefficient, new quota, budget amount and unit of quantity.
2. To the extent available, a deliveries dataset containing records of purchased bearings quantities, including: article number, description, plant code (PSA factory), supplier code (plant), purchasing family, purchasing group, supplier plant code, delivery date, open closed order, quota, and quantity.
3. A consolidated dataset representing the merger of information from the contracts dataset at paragraph 1 above and the deliveries dataset at paragraph 2 above into a single dataset in order to estimate the Value of Commerce (including the raw data and programming code used to conduct the matching exercise).
4. The Claimants’ Vendor Accounting Database (as identified in Table 5(b) of the joint statement produced by the parties’ expert economists dated 20 December 2016 (the “**Experts’ Memorandum**”).

Overcharge

Technical Specifications

5. To the extent available, the technical specifications for bearings/bearings products supplied by the Defendants to the Claimants identified in the AlixPartners letter of 18 November 2016 and in paragraph 5.2(a) of the Experts’ Memorandum.

Supplier Contracts

6. Copies of supplier contracts (including Letters of Intent and Award Letters) between the Claimants and the Defendants, including (but not limited to) the 67 contracts reviewed by the Claimants' expert, and, to the extent available, information on whether the contract is a new or follow-on contract and any amendments to those contracts.
7. In respect of each RFQ identified pursuant to paragraph 3 of the Order:
 - a. The documents comprising the RFQ;
 - b. Responses received to the RFQ;
 - c. Documents relating to the criteria for shortlisting tenderers;
 - d. Documents relating to the process or strategy for evaluating responses from successful tenderers;
 - e. Documents relating to the criteria for awarding a contract to a particular tenderer or tenderers; and
 - f. Documents relating to the process or strategy for negotiating the final price with the successful tenderer or tenderers.
8. The witness statement referred to in paragraph 4 of the Order shall explain: (i) the price amendment codes contained in the data already disclosed by them in these proceedings; (ii) insofar as they are able the Claimants' decision-making process, at all relevant times, in respect of amendments to the prices they paid for automotive bearings; and (iii) the documents which the Claimants are likely to have in their possession as regards such amendments and the ease of obtaining such documents for disclosure.

Pass-on

9. The Claimants shall disclose documents relevant to any pricing strategies and processes which the Claimants employed when setting automobile prices (including those relating to the impact of steel price fluctuations on the prices charged by the Claimants to their customers) during the period from 8 April 2004 to 31 December 2016 and any such documents relating specifically to automobile sales in the EEA.
10. To the extent available, data regarding the sales of automobiles manufactured by the Claimants incorporating bearings purchased in the EEA from 8 April 2004 to 31 December 2016, sold by the Claimants in the EEA, including, to the extent available:
 - a. name of model sold;
 - b. type of car;
 - c. model options and characteristics;

- d. factory where the car or model was manufactured;
 - e. actual net selling price;
 - f. any changes to the actual net selling price for that model; and
 - g. location of the purchaser.
11. To the extent available, data comprising cost information showing, insofar as it is available, changes in total variable and fixed costs for each vehicle model.

Cost of Borrowing/ Cost of investigating

12. The Claimants shall disclose all documents relevant to:
- a. the Claimants' alleged increased cost of borrowing incurred as a result of the Infringement; and
 - b. the Claimants' costs of investigating the impact of the Infringement incurred as at 31 March 2017.