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COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 07 (01) of 2014

In Re: Cartelisation in the supply of Electric Power Steering Systems (EPS Systems)

Against:

1. NSK Limited, Japan
2. JTEKT Corporation, Japan
3. JTEKT Sona Automotive India Limited
4. Rane NSK Steering Systems Ltd.

CORAM

Ashok Kumar Gupta
Chairperson

U. C. Nahta
Member

Sangeeta Verma
Member

Present:

For NSK Ltd., Japan, Rane NSK Steering Systems Ltd.
and for [REDACTED]
[REDACTED]
[REDACTED] of NSK Ltd.,
Japan:

Mr. Somasekhar Sundaresan,
Ms. Nisha Kaur Uberoi,
Ms. Shravani Shekhar,
Mr. Mathew George and
Ms. Nandini Pahari,
Advocates

For [REDACTED]
[REDACTED] and [REDACTED] of NSK
Ltd., Japan:

None

For JTEKT Corporation, Japan, JTEKT Sona
Automotive India Ltd. and for [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] of JTEKT Corporation, Japan:

Mr. Samir Gandhi,
Ms. Aditi Gopalakrishnan,
Ms. Nikita Agarwal,
Mr. Karan Sood and
Ms. Rajshree Sharma,
Advocates



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ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

Background:

1. The present case pertains to alleged anti-competitive conduct by NSK Limited, Japan ('**NSK**') and JTEKT Corporation, Japan ('**JTEKT**') alongwith their Indian subsidiaries *namely* Rane NSK Steering Systems Ltd. ('**RNSS**') and JTEKT Sona Automotive India Limited ('**JSAI**') respectively (hereinafter collectively referred to as the '**parties**'), in the Electric Power Steering ('**EPS**') Systems market.
2. Steering System is a collection of components, linkages, *etc.* which allows a vehicle to follow the desired course. The primary purpose of a Steering System is to allow the driver of a vehicle to guide the vehicle. There are two types of Steering Systems – Manual and Power. A Power Steering is a device that helps the drivers steer by augmenting steering effort of the Steering Wheel so that the driver needs to make less effort to turn the steered wheels when driving at typical speed and reduce considerably physical effort necessary to turn the wheels when a vehicle is stopped or moving slowly. Power Steering Systems can further be categorised into – Hydraulic and Electric. An Electric Power Steering ('**EPS**') System is mechanically less complex than its traditional counterparts and has fewer working parts and no fluids. In an EPS System, the steering movement of the vehicle is assisted by an electric motor.
3. Globally, in the EPS Systems market, NSK and JTEKT are counted amongst the top 5 companies in terms of revenue. In the present case, the Commission has enquired into allegations of cartelisation amongst NSK and JTEKT from 2005 to 25.07.2011, in relation to the supply of EPS Systems to the various automotive Original Equipment Manufacturers ('**OEMs**'), having AAEC in India, as NSK and JTEKT are manufacturing and selling EPS Systems in India through their Indian subsidiaries *namely* RNSS and JSAI respectively. In India, NSK/ RNSS as well as JTEKT/ JSAI manufacture only column type EPS ('**C-EPS**'). The said enquiry has covered the period till 25.07.2011 only because on 25.07.2011, another competition authority *namely* Japanese Fair Trade Commission had conducted an onsite inspection of four Japanese companies including NSK and JTEKT, in connection with alleged cartelisation in another product.



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Facts:

4. The case was initiated on the basis of an application received by the Commission under the provisions of Section 46 of the Competition Act, 2002 (the 'Act') read with the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('LPR'), from NSK. Based upon the same, the Commission, forming an opinion that a *prima facie* case of contravention of the provisions of Section 3 (3) (a) and Section 3 (3) (d) read with Section 3 (1) of the Act is made out, passed an order on 17.09.2014 under Section 26 (1) of the Act and directed the Director General ('DG') to cause an investigation into the matter. During the pendency of investigation before the DG, JTEKT also approached the Commission by filing an application under the provisions of Section 46 of the Act read with the LPR.
5. The DG, after causing a comprehensive investigation, submitted its report. Thereafter, upon mutual agreement between the parties, a confidentiality ring in the matter was created *vide* order dated 19.07.2018. Pursuant thereto, *vide* order dated 10.10.2018, the non-confidential *qua* parties version of the DG report was forwarded to, *inter alia*, NSK, RNSS, JTEKT and JSAI and their concerned persons who were found by the DG to be liable under Section 48 of the Act. They were given an opportunity to file their objections/ suggestions, if any, to the report of the DG and to appear for an oral hearing in the matter. After receipt of the objections/ suggestions to the DG report from them (in confidential and non-confidential versions), the Commission heard oral arguments on behalf of the parties and their respective persons on 12.02.2019 and thereafter, decided to pass an appropriate order. Further, the Commission, in the light of the submissions made by the learned counsel for NSK and its group companies during the oral hearing, decided to delete [REDACTED] and [REDACTED], from the array of parties in the present matter.

Investigation by the DG:

6. The DG, in its investigation report, has found cartelisation amongst the parties in contravention of the provisions of the Act. The DG has found that the parties, upon receipt of Request for Information ('RFI')/ Requests for Quotation ('RFQ') from three



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automobile OEMs viz. [REDACTED]

[REDACTED], for supply of EPS systems to their subsidiaries situated in various regions including in India, had contacts/ interactions with each other through their employees and executives, during the period from 2005 to 25.07.2011, through meetings and/ or telephonic calls. As per the DG, the purpose of such contacts was to co-ordinate prices, allocate the market on the basis of geographical regions (one of which was India), and allocate market on the basis of type of vehicles/ platform/ product and thereby to rig the bidding process of the named three automobile OEMs. The DG has collected information from the parties, recorded the statements on oath of their concerned representatives, and also collected information from third-parties *i.e.* the concerned automobile OEMs. The DG has stated that in their replies and statements, both NSK and JTEKT have admitted the existence of such cartel. Thus, based on the oral and documentary evidences gathered during investigation, the DG has found that the parties have contravened the provisions of Section 3 (3) (a) and Section 3 (3) (d) read with Section 3 (1) of the Act.

Proceedings before the Commission:

7. The Commission has perused the applications filed by NSK and JTEKT under Section 46 of the Act read with the LPR, the investigation report submitted by the DG, the objections/ suggestions thereto filed by the parties and their concerned persons, other material available on record, and also heard oral arguments addressed by the respective learned counsel for the parties and their concerned persons.

Assessment of Evidences:

8. The Commission notes that the DG, in its report, has investigated contacts/ exchange of information between the employees and executives of NSK and JTEKT, with respect to the following RFQs of three automobile OEMs:

- (a) For global RFIs/ RFQs issued by [REDACTED] and RFQ issued by [REDACTED] [REDACTED] for C-EPS system for the [REDACTED];



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(b) For global RFQs issued by [REDACTED] for EPS System for [REDACTED]; and

(c) For global RFQs issued by [REDACTED] for EPS System for [REDACTED].

[REDACTED]

9. Firstly, for the [REDACTED] RFIs/ RFQs, from the admissions of the parties, the DG has found evidence that [REDACTED] of NSK met with [REDACTED] of JTEKT in [REDACTED] at NSK's [REDACTED] office and also had discussions telephonically. In such meetings, they exchanged pricing information for India and other regions to be quoted to [REDACTED]. The objective of such discussions was to fix prices to be quoted to [REDACTED] in such a manner that NSK would be chosen to supply brush type C-EPS System and JTEKT for brushless EPS System. The DG has further found evidence that with respect to the first meeting, [REDACTED] of NSK documented the prices agreed to between NSK and JTEKT for multiple regions including India, and that a copy of this document was given by him to [REDACTED] of JTEKT.

10. Further, the DG has noted from the submissions of the parties that in its first RFI issued in [REDACTED], [REDACTED] had requested quotations for both brush and brushless type EPS System for Asia-Oceania region which included India. The volume *w.r.t.* India was around [REDACTED] for brush type EPS System only. In this RFI, the price quoted by NSK and JTEKT (for [REDACTED]) were as below (prices for other regions were marked up by specific percentage of the [REDACTED] prices):

Table 1 (In [REDACTED])

	Brush Type EPS System	Brushless Type EPS System
NSK	[REDACTED]	[REDACTED]
JTEKT	[REDACTED]	[REDACTED]

11. The DG has further noted that a second RFI was issued by [REDACTED] in [REDACTED]. Finally, [REDACTED] issued a formal RFQ in [REDACTED] to NSK and JTEKT. The same included various regions but not India. However, quotations for Indian market were



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sought for reference purpose only. [REDACTED] had obtained and checked quotes from potential suppliers including NSK and JTEKT so as to provide basic information to [REDACTED]. In response to the RFQ issued by [REDACTED], after discussions with NSK, JTEKT gave a quotation for [REDACTED] but this was only in respect of brushless EPS System as the RFQ did not include brush type EPS System as a targeted product.

12. For the brush type EPS, the DG has pointed out that [REDACTED] had issued an RFQ for the [REDACTED] in [REDACTED] to JSAI and RNSS. [REDACTED] had also provided basic information to [REDACTED] from the quotes obtained by it from the potential suppliers. In response to this RFQ issued by [REDACTED], quotations were given only by RNSS. JSAI did not participate. RNSS was selected and the supply order was issued to it. In this regard, the Commission notes that NSK has admitted before the DG that though in some cases, RFQs for Indian market requirements are released by customers to RNSS and the response to these is also made to the customers directly by RNSS, this is however, done in consultation with NSK. The Commission further notes that NSK has also admitted before the DG that the price quoted by RNSS for the [REDACTED] RFQ in [REDACTED] was also based on the discussions held between NSK and JTEKT, in [REDACTED].
13. From the above evidence collected by the DG, which has not been disputed by the parties during enquiry, the Commission is of the opinion that NSK and JTEKT indulged in cartelisation in respect of the RFIs/ RFQs issued by [REDACTED] for C-EPS system for the [REDACTED]. Further, the Commission notes that NSK had admitted before the DG that contacts with JTEKT benefitted NSK as it was able to avoid significant reduction in prices quoted by it in India for brush type EPS System. Thus, the Commission is of the view that since RNSS was able to quote higher prices to [REDACTED] in India because of NSK's cartelisation with JTEKT in [REDACTED], the said cartelisation has resulted in AAEC in India.
14. The Commission notes that JTEKT/ JSAI in their objections/ suggestions to the report of the DG, have argued that JSAI cannot be held to be a part of the cartel as it was not directly involved in the contacts and meetings between NSK and JTEKT and that, being a subsidiary of JTEKT, it was not involved in the decisions related to the rates to be quoted to the OEMs for the global RFQ. JTEKT/ JSAI have argued that it has been



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stated before the DG that the RFQ of [REDACTED] was handled independently by JSAI on a competitive basis without any support from the individuals of JTEKT who were responsible for sales to [REDACTED]. However, the Commission observes that no reasonable justification has been provided by JTEKT/ JSAI for JSAI refraining to quote in response to [REDACTED] RFQ of [REDACTED] for brush type EPS system. Even from the case record, no reason for such abstention by JSAI has emerged. The Commission is of the view that, without reasonable justification, such non-participation by JSAI in [REDACTED] RFQ in India has to be seen holistically in the light of the existence of a [REDACTED] cartel between NSK and JTEKT that NSK would be allowed to win the orders for brush type C-EPS System and JTEKT for brushless EPS System. When seen in this light, it leads to the only credible inference that JSAI did not quote in the [REDACTED] RFQ as it was a part of the cartel between NSK and JTEKT. But for such cartel, there is no plausible explanation for JSAI's behaviour. Thus, in view of the same, the plea taken by JTEKT/ JSAI, cannot be accepted.

15. Notwithstanding the above, the Commission is of the view that with respect to the RFIs/ RFQs issued by [REDACTED], cartelisation between NSK and JTEKT has been established by the evidence on record and the same has not been refuted by the parties.

- [REDACTED]
16. Secondly, for the [REDACTED] RFQs issued for [REDACTED] in [REDACTED] in relation to the [REDACTED] to be manufactured in [REDACTED] and India and thereafter in [REDACTED] for [REDACTED], from the admissions of the parties, the DG has found evidence that [REDACTED] of NSK had discussions with [REDACTED] of JTEKT in [REDACTED] and many times thereafter. Such discussions took place in NSK's office or telephonically. In such discussions, NSK and JTEKT reached an agreement on minimum bid level. NSK told JTEKT that it (NSK) was unlikely to secure an order because it was not in a position to meet [REDACTED] schedule for development as it did not have a C-EPS Systems manufacturing base in India. The DG noted that eventually, due to paucity of time to meet [REDACTED] production schedule, NSK did not submit a quotation for [REDACTED]. For [REDACTED], NSK submitted a



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bid but could not win due to technical reasons. In [REDACTED] and on [REDACTED], [REDACTED] [REDACTED] intimated to JTEKT that the orders for both [REDACTED] would be given only to JTEKT. The DG further noted that in his deposition, [REDACTED] [REDACTED] of JTEKT had stated that the final prices to be quoted by JTEKT in RFQs for EPS Systems during the period 2005 to 2009 were approved by his boss [REDACTED] [REDACTED]

17. For another [REDACTED] RFQ for brush type EPS System for [REDACTED] issued in [REDACTED], the DG has noted from the submissions of NSK that it did not have the necessary technology to fulfil such order. However, it has stated that it colluded with JTEKT that it would submit a higher quote to [REDACTED] in such RFQ, and would later withdraw its bid. The DG further noted that NSK did in fact submit its bid and later withdrew the same. Hence, JTEKT won the RFQ for [REDACTED]. However, with respect to this RFQ, the DG has found that the same did not pertain to manufacturing of cars in India.

18. From the above evidence collected by the DG which has not been disputed by the parties during enquiry, the Commission observes that in respect of RFQ for [REDACTED] [REDACTED], NSK, despite not having technical wherewithal, gave a quotation to [REDACTED]. From the same, it emerges that *w.r.t.* this RFQ, NSK, in agreement with JTEKT, had provided a cover bid to [REDACTED]. Further, it can also be seen that *w.r.t.* [REDACTED], NSK and JTEKT had reached an agreement on minimum bid level. Thus, in the light of such evidence, the Commission is of the opinion that NSK and JTEKT indulged in cartelisation in respect of the RFQs issued by [REDACTED] for EPS System for [REDACTED] [REDACTED]. Further, the Commission notes that the DG has found that manufacturing of vehicles in relation to such RFQs was to take place in India as well.

[REDACTED]

19. Lastly, for the [REDACTED] RFQs, from the admissions of the parties, the DG has found evidence that in relation to [REDACTED], RFQ for which was floated in [REDACTED] which covered EPS supply to the Indian subsidiary of [REDACTED] namely [REDACTED], [REDACTED] of [REDACTED]



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NSK, upon instructions from his boss [REDACTED] (mistakenly mentioned by the DG as [REDACTED]), contacted [REDACTED] and [REDACTED] of JTEKT and they met at a Karaoke Box named [REDACTED] a few times in [REDACTED]. During such meetings, specific price information was exchanged and market allocation by way of deciding jurisdictions in which supplies would be made by NSK and JTEKT was discussed. The DG has found evidence that details of such discussion were also incorporated in an internal memorandum prepared by [REDACTED] of JTEKT wherein it was written that “*JTEKT would lose by a narrow margin in India*”.

20. However, the DG has noted that sometime later, [REDACTED] decided to procure EPS for this model from a single supplier only. In view of this decision of [REDACTED], the agreement between NSK and JTEKT for [REDACTED] market allocation could not be effected. Later on, upon submission of quotations by NSK and JTEKT, [REDACTED] awarded the supply order to NSK.
21. The DG has nonetheless found that the contacts with JTEKT benefitted NSK as the latter was able to obtain orders from [REDACTED] by predicting the price which would be quoted by JTEKT and accordingly, quoting a price. This fact has also been admitted by NSK before the DG. NSK had also admitted that due to such co-ordination, it was able to avoid significant reduction in the prices quoted by it to [REDACTED] thereby preventing a decline in its revenue.
22. Further, in relation to the [REDACTED], the RFQ for which was floated in [REDACTED], the DG has found evidence from the admissions of the parties that [REDACTED] of JTEKT again met and held discussions with [REDACTED] of NSK at [REDACTED] on [REDACTED]. In respect of this meeting also, an internal memorandum dated [REDACTED] was prepared by [REDACTED] of JTEKT to report to his superior [REDACTED]. During the said meeting, JTEKT had requested NSK to allow it to handle the entire [REDACTED] requirement for [REDACTED]. NSK however, disagreed and suggested that JTEKT may supply for the [REDACTED] units for [REDACTED] in [REDACTED]. Thus, due to a difference of opinion regarding market allocation, no agreement could be reached between NSK and JTEKT with respect to [REDACTED]. In the meanwhile, [REDACTED] paused



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its sourcing activity for this model. When it later revived its sourcing activity in [REDACTED], only NSK gave quotation for India and not JTEKT.

23. From the above evidence collected by the DG, which has not been disputed by the parties before the Commission, the Commission is of the opinion that NSK and JTEKT exchanged sensitive commercial information in respect of the RFQs issued by [REDACTED] for C-EPS system for [REDACTED]. Such exchange of information, as admitted by NSK, benefitted NSK in at least the RFQ for [REDACTED], as it was able to avoid significant reduction in prices quoted by it because of such cartelisation. Further, the Commission notes that NSK has stated in its objections/ suggestions to the report of the DG that “*The Indian market was crucial in relation to [REDACTED] sales, with [REDACTED] units sold, [REDACTED] per cent being in relation to sales in the Indian market alone.*” Thus, the Commission is of the view that since NSK was able to quote higher prices to [REDACTED] in India because of NSK’s cartelisation with JTEKT in [REDACTED], the said cartelisation has resulted in AAEC in India.
24. In view of the aforesaid evidences collected by the DG which have been analysed by the Commission in detail and have not been refuted by the parties during enquiry, the Commission concludes that NSK and JTEKT, and their Indian subsidiaries RNSS and JSAI respectively, indulged in cartelisation in the EPS Systems market, from at least 2005 to 25.07.2011, by means of directly or indirectly determining price, allocating markets, co-ordinating bid response and manipulating the bidding process of automobile OEMs [REDACTED], which had AAEC in India. The Commission holds that such conduct of the parties is in contravention of the provisions of Section 3 (3) (a), 3 (3) (c) and 3 (3) (d) read with Section 3 (1) of the Act.
25. Though JTEKT has submitted that it derived no profits in India from such cartelisation, the Commission is of the view that once it is established by evidence on record that JTEKT was a part of a cartel which had an AAEC in India, whether or not it profited from such a cartel would have no bearing on the finding of contravention by JTEKT.



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Liability under Section 48:

26. As regards the liability of the concerned ‘persons’ (including employees, officials, executives *etc.*) of the parties under the provisions of Section 48 of the Act, the evidences brought out by the DG against ‘persons’ found liable under the provisions of Section 48 (2) of the Act by the DG, are as tabulated below:

NSK – Table 2

S. No.	Name	Role
1.	[REDACTED]	Met with officials of JTEKT <i>w.r.t.</i> RFQs issued by [REDACTED] for C-EPS system for [REDACTED]
2.	[REDACTED]	Met with officials of JTEKT <i>w.r.t.</i> RFQs issued by [REDACTED] for C-EPS system for [REDACTED]
3.	[REDACTED]	Met with officials of JTEKT <i>w.r.t.</i> global RFQs issued by [REDACTED] for EPS System for [REDACTED]
4.	[REDACTED]	Gave instructions to [REDACTED] to contact officials of JTEKT <i>w.r.t.</i> global RFQs issued by [REDACTED] for EPS System for [REDACTED]
5.	[REDACTED]	Had discussions with officials of JTEKT <i>w.r.t.</i> global RFQs issued by [REDACTED] for EPS System for [REDACTED]
6.	[REDACTED]	Had discussions with officials of JTEKT <i>w.r.t.</i> global RFQs issued by [REDACTED] for EPS System for [REDACTED]

JTEKT – Table 3

S. No.	Name	Role
1.	[REDACTED]	Met with officials of NSK <i>w.r.t.</i> RFQs issued by [REDACTED] for C-EPS system for [REDACTED]
2.	[REDACTED]	Met with officials of NSK <i>w.r.t.</i> RFQs issued by [REDACTED] for C-EPS system for [REDACTED]
3.	[REDACTED]	Met with officials of NSK <i>w.r.t.</i> global RFQs issued by [REDACTED] for EPS System for [REDACTED]
4.	[REDACTED]	Met with officials of NSK <i>w.r.t.</i> global RFQs issued by [REDACTED] for EPS System for [REDACTED]
5.	[REDACTED]	[REDACTED] reported the meeting held <i>w.r.t.</i> global RFQs issued by [REDACTED] for [REDACTED], between officials of NSK and JTEKT, to [REDACTED] by means of an internal memorandum



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S. No.	Name	Role
6.	[REDACTED]	Had discussions with officials of NSK <i>w.r.t.</i> global RFQs issued by [REDACTED] for EPS System for [REDACTED]
7.	[REDACTED]	Approved the final prices to be quoted by JTEKT during the period 2005 to 2009 including <i>w.r.t.</i> global RFQs issued by [REDACTED] for EPS System for [REDACTED]

27. In the light of the above evidences on record which show active participation in the cartel of the above-mentioned persons, and which have not been refuted by the parties during enquiry, the Commission holds the aforementioned 6 individuals of NSK named in Table 2 above and 7 individuals of JTEKT named in Table 3 above liable under the provisions of Section 48 (2) of the Act.
28. Further, the following ‘persons’ of NSK and JTEKT, being in-charge of and responsible to the companies for the conduct of their respective businesses, have been found by the DG to be liable under the provisions of Section 48 (1) of the Act:

NSK – Table 4

S. No.	Name	Designation
1.	[REDACTED]	[REDACTED] from 01.01.2005 to 24.06.2009
2.	[REDACTED]	[REDACTED] from 25.06.2009 to 31.12.2011
3.	[REDACTED]	[REDACTED] from 01.01.2005 to 31.12.2005
4.	[REDACTED]	[REDACTED] from 01.01.2006 to 26.06.2006
5.	[REDACTED]	[REDACTED] from 27.06.2006 to 24.06.2008
6.	[REDACTED]	[REDACTED] from 25.06.2008 to 31.12.2011



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JTEKT – Table 5

S. No.	Name	Designation
1.	[REDACTED]	[REDACTED] from January 2006 to June 2009
2.	[REDACTED]	[REDACTED] from July 2009 to June 2011
3.	[REDACTED]	[REDACTED] from January 2005 to June 2007
4.	[REDACTED]	[REDACTED] from July 2007 to June 2009
5.	[REDACTED]	[REDACTED] from July 2009 to June 2010
6.	[REDACTED]	[REDACTED] from July 2010 to June 2011
7.	[REDACTED]	[REDACTED] from July 2011 to December 2011

29. In this regard, the Commission finds the two individuals of NSK mentioned at Sl. Nos. 1 and 2 in Table 4 above, who were in-charge of, and responsible to NSK, for the conduct of its business, being the [REDACTED] of NSK at the time when the contravention was committed by the parties, liable under the provisions of Section 48 (1) of the Act. The said individuals, in their common objections/ suggestions to the report of the DG have not controverted this finding of the DG.
30. With regard to the other four individuals of NSK mentioned at Sl. Nos. 3 to 6 in Table 4 above, who were the [REDACTED] of NSK, at the time when the contravention was committed by the parties, the Commission notes that the DG Report could not be served upon these persons before the date of final hearing in the matter. Hence, separate proceedings against these four individuals of NSK will be carried out in due course.
31. With regard to JTEKT, the Commission notes that JTEKT and its individuals in their common objections/ suggestions to the report of the DG have stated that the above-mentioned persons had no role to play in the alleged cartelisation. The [REDACTED] of JTEKT *i.e.* [REDACTED] did not have any involvement in the day-to-day business or decision making on any pricing, bidding or sales activity of JTEKT and they had no knowledge of JTEKT's sales related business arrangement with NSK. Further, the [REDACTED] *i.e.* [REDACTED]



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██████████ only look after the overall functioning of the department and their scope of work was limited to strategic decision making, structuring of the business and monitoring of progress related to output generation for customers. They were also not involved in communications with the competitors and were not even aware of the discussions taking place amongst the lower level employees of JTEKT. Thus, they could not have prevented such conduct even when exercising reasonable due diligence.

32. In the light of the submissions made by JTEKT and its individuals in their common objections/ suggestions to the report of the DG regarding the afore-mentioned seven individuals of JTEKT, the Commission does not hold these seven individuals of JTEKT named in Table 5 above liable under the provisions of Section 48 (1) of the Act.

Conclusion:

33. In view of the above, the Commission holds NSK and JTEKT, and their Indian subsidiaries RNSS and JSAI respectively, liable for contravention of the provisions of Section 3 (3) (a), 3 (3) (c) and 3 (3) (d) read with Section 3 (1) of the Act as they indulged in cartelisation in the EPS Systems market from at least 2005 to 25.07.2011 (on which date, another competition authority, *namely*, Japanese Fair Trade Commission had conducted an onsite inspection of four Japanese companies including NSK and JTEKT, in connection with alleged cartelisation in another product). These entities, by means of directly or indirectly determining price, allocating markets, co-ordinating bid response and manipulating the bidding process of automobile OEMs ██████████, have contravened the provisions of Section 3 of the Act which had AAEC in India. Further, the Commission holds eight persons of NSK named in Tables 2 and 4 above and 7 persons of JTEKT named in Table 3 above liable under the provisions of Section 48 of the Act.

Penalty:

34. For such contravention of the provisions of the Act, the Commission is empowered, in terms of Section 27 (b) of the Act, to impose a penalty upon the contravening parties and their concerned persons. Under the *proviso* to Section 27 (b) of the Act, the Commission may impose upon a cartelising entity, penalty of upto three times of its profit for each year of the continuance of such agreement or ten percent of its turnover



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for each year of the continuance of such agreement, whichever is higher. In the present case, the period of cartel has been identified to be from at least 2005 to 25.07.2011. As the relevant provisions of the Act *i.e.* Section 3, were enforced *w.e.f.* 20.05.2009, the Commission proceeds to compute penalty to be imposed upon the contravening parties, for the period from 20.05.2009 to 25.07.2011.

35. Further, as per the Hon'ble Supreme Court's decision in *Excel Crop Care Limited v. Competition Commission of India and Others*, (2017) 8 SCC 47, 'turnover' for the purposes of Section 27 (b) is 'relevant turnover' of a company which relates to the product in question in respect whereof the provisions of the Act are found to have been contravened. In the present case, the product in question is EPS Systems. Both NSK and JTEKT have submitted that direct sales of EPS Systems in India are made by them only through their Indian subsidiaries RNSS and JSAI respectively. Therefore, for the purposes of calculation of penalty, the Commission shall take into consideration 'relevant turnover' and 'relevant profit' details of RNSS and JSAI.
36. The Commission notes that JTEKT has submitted in its objections/ suggestions to the report of the DG that for the purposes of imposition of penalty, only the turnover/ profits derived from sales of EPS Systems in all the RFQs issued by the relevant automobile OEMs *i.e.* [REDACTED] be taken as its relevant turnover. However, the Commission is of the view that such plea of JTEKT is misconceived in terms of the clear decision of the Hon'ble Supreme Court in the case of *Excel Crop Care (supra)*.
37. Furthermore, in the present case, both NSK and JTEKT had filed applications under Section 46 of the Act read with LPR seeking benefit of reduction in penalty. In this regard, the Commission notes that since NSK was the first to approach the Commission for grant of lesser penalty, NSK, RNSS and the identified persons are entitled to benefit of reduction in penalty upto 100%. Further, it is noted that since JTEKT was the second to approach the Commission for grant of lesser penalty, JTEKT, JSAI and the identified persons are entitled to benefit of reduction in penalty upto 50%.
38. Thus, keeping in mind the aforesaid, the Commission proceeds to determine the penalty to be imposed upon the contravening entities as follows:



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37.1 As per the *proviso* to Section 27 (b) of the Act, the maximum penalty which may be imposed upon NSK/ RNSS, based upon the financials of RNSS, is as follows:

Financials of RNSS (In INR) – Table 6

FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	10 % OF RELEVANT TURNOVER	3 TIMES OF RELEVANT PROFIT
2009-10 ¹	73,93,71,692	1,40,47,014	7,39,37,169	4,21,41,041
2010-11	74,20,21,295	1,10,68,172	7,42,02,130	3,32,04,516
2011-12 ²	62,83,83,659	1,61,78,714	6,28,38,366	4,85,36,142
Total			21,09,77,665	12,38,81,699

37.2 From the aforesaid table, it can be seen that ten percent of the relevant turnover of RNSS for each year of the continuance of the agreement is higher than three times the relevant profit of RNSS for each year of the continuance of the agreement. Therefore, in terms of the *proviso* to Section 27 (b) of the Act, the Commission proceeds to impose penalty upon NSK/ RNSS, based on the relevant turnover of RNSS.

37.3 Based on the facts and circumstances of the present case, the Commission decides to impose upon NSK/ RNSS, penalty @ 4% (percent) of the relevant turnover of RNSS, for each year of the continuance of the agreement which amounts to INR 8,43,91,066/-.

37.4 However, the Commission notes that NSK provided vital disclosures by submitting evidence of the cartel, which enabled the Commission to form a *prima facie* opinion regarding the existence of the cartel and the Commission at that time, did not have sufficient information to form such opinion. Also, NSK cooperated genuinely, fully, continuously and expeditiously throughout the investigation and further proceedings before the Commission. Thus, the Commission, keeping in mind the quality of information provided by NSK and the facts and circumstances of the case, decides to grant NSK/ RNSS, benefit of reduction in penalty of 100% (percent) in terms of Regulation 4 (a) of the LPR.

¹ From 20.05.2009 to 31.03.2010 *i.e.* 316 out of 365 days.

² From 01.04.2011 to 25.07.2011 *i.e.* 116 out of 366 days.



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- 37.5 Consequently, the penalty to be paid by NSK/ RNSS after reduction is *nil*.
- 37.6 Similarly, the maximum penalty which may be imposed upon JTEKT/ JSAI, based upon the financials of JSAI, is as follows:

Financials of JSAI (In INR) – Table 7

FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	10 % OF RELEVANT TURNOVER	3 TIMES OF RELEVANT PROFIT
2009-10 ³	1,94,54,08,548	8,26,36,164	19,45,40,855	24,79,08,493
2010-11	3,80,26,90,000	21,04,30,000	38,02,69,000	63,12,90,000
2011-12 ⁴	1,47,71,52,240	4,83,96,721	14,77,15,224	14,51,90,164
Total			72,25,25,079	1,02,43,88,657

- 37.7 From the aforesaid table, it can be seen that three times of the relevant profit of JSAI for each year of the continuance of the agreement is higher than ten percent of the relevant turnover of JSAI for each year of the continuance of the agreement. Therefore, in terms of the *proviso* to Section 27 (b) of the Act, the Commission proceeds to impose penalty upon JTEKT/ JSAI, based on the relevant profit of JSAI.
- 37.8 Based on the facts and circumstances of the present case, the Commission decides to impose upon JTEKT/ JSAI, penalty @ 1 times of the relevant profit of JSAI for each year of the continuance of the agreement which amounts to INR 34,14,62,886/-.
- 37.9 However, the Commission notes that JTEKT provided significant added value to the evidence already in possession of the Commission and the Director General, to establish existence of the cartel. Further, JTEKT co-operated genuinely, fully, continuously and expeditiously throughout the investigation and further proceedings before the Commission. Thus, the Commission, keeping in mind the quality of information provided by JTEKT and the facts and circumstances of the

³ From 20.05.2009 to 31.03.2010 *i.e.* 316 out of 365 days.

⁴ From 01.04.2011 to 25.07.2011 *i.e.* 116 out of 366 days.



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case, decides to grant to JTEKT/ JSAI, benefit of reduction in penalty of 50% (percent) in terms of Regulation 4 (c) of the LPR.

37.10 Consequently, the penalty to be paid by JTEKT/ JSAI after reduction is INR 17,07,31,443/-.

39. Further, the Commission decides to impose penalty upon the persons found liable under the provisions of Section 48 of the Act, @ 10% (percent) of the average of their incomes for the last three preceding financial years, in terms of the provisions of Section 27 (b) of the Act. The same is calculated as follows:

38.1 The penalty calculated for the individuals of NSK:

NSK (In INR ⁵) – Table 8

S. NO.	PERSON	YEAR	INCOME
1.	[REDACTED]	2009-2010	51,62,408
		2010-2011	66,61,197
		2011-2012	69,04,838
		Total	1,87,28,443
		Average	62,42,814
		Penalty	6,24,281
2.	[REDACTED]	2009-2010	74,61,798
		2010-2011	98,71,165
		2011-2012	2,71,60,084
		Total	4,44,93,047
		Average	1,48,31,016
		Penalty	14,83,102
3.	[REDACTED]	2009-2010	49,66,711
		2010-2011	60,15,162
		2011-2012	63,83,557
		Total	1,73,65,430
		Average	57,88,477
		Penalty	5,78,848

⁵ Converted from Japanese Yen to INR @ 1 JPY = 0.5657 INR and from Euro to INR @ 1 EUR = 63.6605 INR prevailing as on 25.07.2011.



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S. NO.	PERSON	YEAR	INCOME
4.	[REDACTED]	2009-2010	73,39,578
		2010-2011	86,75,807
		2011-2012	82,84,326
		Total	2,42,99,711
		Average	80,99,904
		Penalty	8,09,990
5.	[REDACTED]	2009-2010	57,99,573
		2010-2011	67,81,917
		2011-2012	68,84,925
		Total	1,94,66,416
		Average	64,88,805
		Penalty	6,48,881
6.	[REDACTED]	2009-2010	73,34,374
		2010-2011	70,18,341
		2011-2012	1,22,00,678
		Total	2,65,53,393
		Average	88,51,131
		Penalty	8,85,113
7.	[REDACTED]	2009-2010	3,43,14,231
		2010-2011	3,74,04,084
		2011-2012	2,61,35,340
		Total	9,78,53,655
		Average	3,26,17,885
		Penalty	32,61,789
8.	[REDACTED]	2009-2010	2,44,47,291
		2010-2011	3,34,43,618
		2011-2012	4,46,90,300
		Total	10,25,81,210
		Average	3,41,93,737
		Penalty	34,19,374

38.2 As NSK was the first to approach the Commission as a lesser penalty applicant in the matter and has been granted 100% (percent) reduction in penalty, the Commission decides to grant benefit of reduction in penalty of 100% (percent) in terms of Regulation 4 (a) of the LPR to the above-stated identified persons of NSK also.



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38.3 Thus, the penalty to be paid by the aforesaid individuals of NSK, identified in Table 8 above would be *nil*.

38.4 The penalty calculated for the individuals of JTEKT:

JTEKT (In INR ⁶) – Table 9

S. NO.	PERSON	YEAR	INCOME
1.	[REDACTED]	2009-2010	53,93,554
		2010-2011	55,78,481
		2011-2012	59,19,937
		Total	1,68,91,972
		Average	56,30,657
		Penalty	5,63,066
2.	[REDACTED]	2009-2010	71,58,413
		2010-2011	72,10,440
		2011-2012	76,10,950
		Total	2,19,79,804
		Average	73,26,601
		Penalty	7,32,660
3.	[REDACTED]	2009-2010	53,84,174
		2010-2011	52,16,093
		2011-2012	55,75,313
		Total	1,61,75,581
		Average	53,91,860
		Penalty	5,39,186
4.	[REDACTED]	2009-2010	67,39,467
		2010-2011	71,51,904
		2011-2012	74,60,876
		Total	2,13,52,246
		Average	71,17,415
		Penalty	7,11,742
5.	[REDACTED]	2009-2010	92,45,444
		2010-2011	1,37,94,538
		2011-2012	2,50,36,120
		Total	4,80,76,103
		Average	1,60,25,368
		Penalty	16,02,537

⁶ Converted from Japanese Yen to INR @ 1 JPY = 0.5657 INR prevailing as on 25.07.2011.



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S. NO.	PERSON	YEAR	INCOME
6.	[REDACTED]	2009-2010	66,67,340
		2010-2011	70,23,194
		2011-2012	75,81,794
		Total	2,12,72,328
		Average	70,90,776
		Penalty	7,09,078
7.	[REDACTED]	2009-2010	1,39,92,677
		2010-2011	1,62,77,308
		2011-2012	1,22,67,996
		Total	4,25,37,981
		Average	1,41,79,327
		Penalty	14,17,933

38.5 As JTEKT was the second to approach the Commission as a lesser penalty applicant in the matter and has been granted 50% (percent) reduction in penalty, the Commission decides to grant benefit of reduction in penalty of 50% (percent) in terms of Regulation 4 (c) of the LPR to the above-stated identified persons of JTEKT also.

38.6 Thus the penalty to be paid by the aforesaid individuals of JTEKT, identified in Table 9 above would be as follows:

JTEKT (In INR) – Table 10

S. NO.	PERSON	PENALTY IMPOSED	PENALTY PAYABLE AFTER REDUCTION
1	[REDACTED]	5,63,066	2,81,533
2	[REDACTED]	7,32,660	3,66,330
3	[REDACTED]	5,39,186	2,69,593
4	[REDACTED]	7,11,742	3,55,871
5	[REDACTED]	16,02,537	8,01,268
6	[REDACTED]	7,09,078	3,54,539
7	[REDACTED]	14,17,933	7,08,966



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ORDER

40. The parties and their concerned persons identified in Tables 2, 3 and 4 above are directed to cease and desist from indulging in any act of cartelisation, in the EPS Systems market in India.
41. Further, under the provisions of Section 27 (b) of the Act, the Commission directs the following entities/ persons to pay the following penalty:

Table 10

S. No.	Name of the Party	Penalty (In INR)	Penalty in Words
1.	JTEKT Corporation, Japan/ JTEKT Sona Automotive India Limited (now JTEKT India Limited)	17,07,31,443/-	Rupees Seventeen Crores Seven Lacs Thirty One Thousand Four Hundred and Forty Three Only
2.	████████████████████	2,81,533/-	Rupees Two Lacs Eighty One Thousand Five Hundred and Thirty Three Only
3.	████████████████████	3,66,330/-	Rupees Three Lacs Sixty Six Thousand Three Hundred and Thirty Only
4.	████████████████████	2,69,593/-	Rupees Two Lacs Sixty Nine Thousand Five Hundred and Ninety Three Only
5.	████████████████████	3,55,871/-	Rupees Three Lacs Fifty Five Thousand Eight Hundred and Seventy One Only
6.	████████████████████	8,01,268/-	Rupees Eight Lacs One Thousand Two Hundred and Sixty Eight Only
7.	████████████████████	3,54,539/-	Rupees Three Lacs Fifty Four Thousand Five Hundred and Thirty Nine Only
8.	████████████████████	7,08,966/-	Rupees Seven Lacs Eight Thousand Nine Hundred and Sixty Six Only



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42. The Commission directs the entities/ persons mentioned in Table 10 above to deposit the respective penalty amounts within 60 days of receipt of this order.
43. As noted as Para 30 above, separate proceedings against four individuals of NSK, who have been identified by the DG to be liable under the provision of Section 48 (1) of the Act will be carried out in due course and a separate order in this regard, shall be issued.
44. The Commission further directs that two versions of the present order may be prepared – non-confidential *qua* parties version and public version. The same shall be prepared keeping in mind the confidentiality requests made by the parties and the provisions of Section 57 of the Act.
45. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U.C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 09.08.2019