



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO023May20

In the matter between:

The Competition Commission

Applicant

And

Faurecia Emissions Control
Technologies South Africa (Pty) Ltd

Respondent

Panel : E Daniels (Presiding Member)
: I Valodia (Tribunal Member)
: T Vilakazi (Tribunal Member)

Heard on : 18 May 2020

Decided on : 18 May 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Faurecia Emissions Control Technologies South Africa (Pty) Ltd annexed hereto.

**Presiding Member
Mr Enver Daniels**

**Date
18 May 2020**

Concurring: Prof. Imraan Valodia and Dr. Thando Vilakazi

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

**CT Case No:
CC Case No: 2014Nov0688**

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

**FAURECIA EMISSIONS CONTROL TECHNOLOGIES
SOUTH AFRICA (PTY) LTD**

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND FAURECIA EMISSIONS CONTROL TECHNOLOGIES SOUTH AFRICA (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i), (ii) AND (iii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Faurecia Emissions Control Technologies South Africa (Pty) Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b) (i), (ii) and (iii) of the Act, on the terms set out below.

1. Definitions

For the purposes of this Consent Agreement, the following definitions shall apply:

- 1.1 “**Act**” means the Competition Act, No. 89 of 1998, as amended;
- 1.2 “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 “**Commissioner**” means the Commissioner of the Commission, appointed in terms of section 22 of the Act;
- 1.4 “**Complaint**” means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2014Nov0688;
- 1.5 “**Consent Agreement**” means this agreement duly signed and concluded between the Commission and Faurecia;
- 1.6 “**Eberspächer**” means Eberspächer Exhaust Technology GmbH & Co KG, company incorporated under the laws of Germany with its address at Eberspächerstraße 24, 73730 Esslingen am Neckar, Germany.
- 1.7 “**Faurecia**” means Faurecia SE, a company incorporated under the laws of France with its address at 23-27 avenue des Champs Pierreux, Nanterre, France. Faurecia owns Faurecia Emissions Control Technologies South Africa (Pty) Ltd, a company incorporated under the laws of the Republic of South Africa, with its principal place of business at Ascot Office Park, 1 Ascot Road, 6045, Port Elizabeth;
- 1.8 “**Parties**” means the Commission and Faurecia;

- 1.9 **"Respondents"** means Eberspächer and Faurecia;
- 1.10 **"RFQ"** means Request for Quotation;
- 1.11 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 26 November 2014, the Commissioner initiated a complaint against a number of motor vehicle exhaust system manufacturers, in terms of section 49(B)(1) of the Act for alleged price fixing, market division and collusive tendering in the market for the supply of motor vehicle exhaust systems to Original Equipment Manufacturers worldwide, in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.
- 2.2 The Commission's investigation against Eberspächer and Faurecia revealed the following:
- 2.2.1 During on or about 2003, Eberspächer and Faurecia had an agreement and/or engaged in a concerted practice to divide markets by allocating specific types of goods and tender collusively in respect of a tender issued by Daimler AG for the manufacture and supply of motor vehicle exhaust systems for the Mercedes Benz C-Class W204 platform.
- 2.2.2 During on or about 2003, Daimler AG issued a tender for the manufacture and supply of motor vehicle exhaust systems for the Mercedes Benz C-Class W204 platform. Eberspächer and Faurecia were invited to submit bids. Daimler AG required exhaust systems for both gasoline and diesel engines.
- 2.2.3 The Respondents agreed that, in responding to the RFQ for the W204 platform in 2003, Eberspächer would focus only on the gasoline portions of the RFQ, while

Faurecia would focus only on the diesel portions. Ultimately, Faurecia was awarded the diesel (OM646) portion of the RFQ, and Eberspächer was awarded the gasoline (M271 and M272) portions by Daimler AG.

2.2.4 The above conduct contravened section 4(1)(b) (ii) and (iii) of the Act.

3. ADMISSION

Faurecia admits that it engaged in prohibited practices in contravention of section 4(1)(b) (ii) and (iii) of the Act in relation to the conduct described in paragraph 2 above.

4. CO-OPERATION

4.1 Faurecia agrees to fully cooperate with the Commission in its prosecution of the remaining respondent in the Commission's complaint referral. This cooperation includes, but is not limited to:

4.1.1 To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of Faurecia or under Faurecia's control, concerning the alleged prohibited practices set out in this Consent Agreement.

4.1.2 Testifying during the hearing of the complaint referral, in respect of the prohibited practices set out in this Consent Agreement.

5. FUTURE CONDUCT

Faurecia agrees to:

5.1 prepare and circulate a statement summarizing the contents of this Consent Agreement to its employees, managers and directors within fourteen (14) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

5.2 refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;

- 5.3 develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;
- 5.4 submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of this Consent Agreement as an order by the Tribunal; and
- 5.5 undertakes henceforth to engage in competitive practices.

6. ADMINISTRATIVE PENALTY

- 6.1 Faurecia agrees and undertakes to pay an administrative penalty in the amount of R66 885, 66 (**Sixty-six thousand eight hundred and eighty five rands and sixty six cents**). This amount does not exceed 10% of Faurecia's turnover in the Republic of South Africa for the financial year ended February 2013.
- 6.2 Faurecia shall pay the full amount of the administrative penalty, being R66 885, 66 (**Sixty-six thousand eight hundred and eighty-five rands and sixty cents**) to the Commission within 30 days of the confirmation of the Consent Agreement as an order of the Tribunal.
- 6.3 The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission

Bank: Absa Bank, Pretoria

Account Number: 4087641778

Branch Code: 632005

Ref: 2014Nov0688/ Faurecia

6.4 The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

7. COMPLIANCE


All compliance reports and proof of payments relating to this matter shall be forwarded to the Commission at CartelSettlements@compcom.co.za .

8. FULL AND FINAL SETTLEMENT

This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation into the activities of Faurecia under case no. 2014Nov0688 and concludes all proceedings between the Commission and Faurecia.

Dated and signed at Cape Town on the 10 day of April 2020.

For **Faurecia Emissions Control Technologies South Africa (Pty) Ltd**

DocuSigned by:

C0A54C407820419...

Name in Full: Sabine Reoule

Position: Country CFO

Dated and signed at _____ on the _____ day of _____ 2020.

For the **Commission**

Tembinkosi Bonakele

Commissioner