



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO067Jul20

In the matter between:

The Competition Commission

Applicant

And

Sumitomo Electric Industries Ltd

Respondent

Panel : Y Carrim (Presiding Member)
: A Ndoni (Tribunal Member)
: F Tregenna (Tribunal Member)

Heard on : 28 July 2020

Decided on : 28 July 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Sumitomo Electric Industries Ltd annexed hereto.

**Presiding Member
Ms Yasmin Carrim**

**Date
28 July 2020**

Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT CASE NO:

**CC CASE NO: 2014DEC0766 &
2015FEB0054**

In the matter between

THE COMPETITION COMMISSION

Applicant

And

SUMITOMO ELECTRIC INDUSTRIES, LTD

Respondent

FILING SHEET

BE PLEASED TO TAKE NOTICE that the applicant hereby files the settlement agreement concluded between the Competition Commission and Sumitomo Electric Industries, Ltd.

Signed at **Pretoria** _____ on the **02** day of **July 2020**

Competition Commission

The Dti Campus, Building C, Mulayo

77 Meintjies Street

Tel: 012 763 8654

Mobile:071 573 9370

Email: MbongiseniN@compcom.co.za

Ref: Mbongiseni Ndlovu/2014Dec0766&

2015Feb0054

TO:

THE REGISTRAR

Competition Tribunal of South Africa

The Dti Campus, 77 Meintjies Street,

1st Floor, Block C, Mulayo Building

Sunnyside, Pretoria

Tel: 012 394 3300/55

Fax: 012 394 0169

E-mail: Tebogom@comptrib.co.za

AND TO:

Webber Wentzel

90 Rivonia Road

Sandton

Johannesburg

2196

Ref: Mr Martin Versveld, Sumitomo

Electric Industries

Tel: 011 530 5322

Mobile: 082 926 1897

By Email: martin.versveld@webberwentzel.com



Form CT1(1)

About this Form

- This form is issued in terms of section 50 of the Competition Act and Rules.
- This form is to be used only for a referral by the Competition Commission.
- Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.
- If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:
 - (a) a concise statement of the grounds on which the Complaint is opposed;
 - (b) the material facts or points on which the respondent relies;
 - (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.
- An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.
- Please see Competition Tribunal Rules 14 through 19.
- Form continues on Page 2.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

Date: _____

To: **the Registrar of the Competition Tribunal, and:**

(Name of respondent and [if applicable] other participants :)

Concerning:

(Complaint name and Commission file number:)

From: **the Competition Commission**

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section _____ by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)



Form CT1(1)
Page 2
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- An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.
- Please see Competition Tribunal Rules 14 through 19.

**Contacting
the Tribunal**

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

This referral is to proceed as a consent proceeding.

This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

Authorised Signature:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

**CT CASE NO:
CC CASE NO: 2014Dec0766&
2015Feb0054**

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

SUMITOMO ELECTRIC INDUSTRIES, LTD.

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND SUMITOMO ELECTRIC INDUSTRIES, LTD., IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) (i) (ii) and (iii) OF THE COMPETITION ACT, 1998

Preamble

The Competition Commission and Sumitomo Electric Industries, Ltd. hereby agree that an 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)(b) of the Competition Act No. 89 of 1998, as amended, in respect of a contravention of section 4(1)(b) (i) (ii) and (iii).



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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 "**Consent Agreement**" means this agreement duly signed and concluded between the Commission and SEI;
- 1.4 "**CLP**" means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No.31064 of 23 May 2008);
- 1.5 "**SEI**" means Sumitomo Electric Industries Ltd, a private company duly registered in accordance with the company laws of Japan with its principal place of business at 4-5-33, Kitahama, Chuo-ku, Osaka in Japan;
- 1.6 "**Denso**" means Denso Corporation, a private company incorporated under the company laws of Japan, with its principal place of business situated at 1-1, Showa-cho, Kariya, Aichi 448-8661, Japan



1.7 **"Parties"** means the Commission and SEI collectively;

1.8 **"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 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1. SEI is implicated in relation to two cartel instances, namely:

2.2. First Complaint

2.2.1. On 22 December 2014, the Commissioner initiated a complaint against the SEI and Denso for allegedly fixing prices, dividing market, collusive tendering and/or concerted practice in for the manufacture and supply of heater control panels ("HCPs") in contravention of section in contravention of section 4(1)(b) (i), (ii) and (iii) of the Act.

2.2.2. It is alleged that on or about 2007, SEI and Denso engaged in discussions regarding the specific OEMs, RFQs issued by Original Equipment Manufacturers ("OEMs") and exchanged information with each other, which allowed them to reach agreements and/or be party to a concerted practice to fix prices quoted to OEMs, divide markets and tender collusively as mentioned above. The initiated

conduct was investigated by the Commission under Case No.2014Dec0766

2.2.3. The investigation revealed the following:

2.2.3.1. During or about 2007, SEI and Denso met, and/or held telephone conversations in order to discuss and agree to set the prices by which they would respond to the RFQ issued by Toyota in respect of the HCPs of the 2009 Toyota Prado 611L.

2.3. Second Complaint

2.3.1. On 23 February 2015, the Competition Commissioner (“the Commissioner”) initiated complaints against SEI and Denso in the market for the manufacture and supply of body electronic control units (“body ECUs”) for price fixing, market division, collusive tendering and or concerted practice in contravention of section 4(1)(b) (i), (ii) and (iii) of the Act.

2.3.2. It is alleged that on or about 2003, SEI and Denso engaged in discussions regarding the specific OEMs, RFQs issued by OEMs and exchanged information with each other, which allowed them to reach agreements and/or be party to a concerted practice to fix prices quoted to OEMs, divide markets and tender collusively as mentioned above. The initiated conduct was investigated by the Commission under Case No. 2015Feb0054.

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2.3.3. The investigation revealed the following:

2.3.3.1. During or about 2003, SEI and Denso met, and/or held telephone conversations in order to discuss and agree to set the prices by which they would respond to the RFQ issued by Toyota in respect of the standard body ECUs for the 2009 Toyota Prius, 2010 Toyota Verso, 2010 Toyota Auris and 2011 Toyota Yaris.

2.3.3.2. The bidding process undertaken by the OEMs typically entails the issue of the RFQ by the OEMs approximately three (3) years prior to production of a vehicle. It would then be before or during the bidding process whereby the respondent would meet or exchange the abovementioned information.

2.3.3.3. The implicated automotive models were sold in South Africa as follows, Toyota Prado 2010 to 2013, Prius from 2009 to 2015, Yaris from 2011 to 2014, Verso from 2010 to 2014 and Auris from 2010 to 2012.

2.4. The Commission submits that the first and second complaints are in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.


M.N.

3. FUTURE CONDUCT

SEI agrees and undertakes to:

- 3.1. refrain from engaging in conduct in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;
- 3.2. circulate a statement summarising the contents of this Consent Agreement to its managers and directors within 30 days (thirty) from the date of confirmation of this Consent Agreement by the Tribunal;
- 3.3. to implement and monitor a competition law compliance programme. Such programme shall incorporate corporate governance designed to ensure the employees, management, directors and agents do not engage in future contraventions of the Act. Such compliance programme will include mechanisms for the monitoring and detection of any contraventions of the Act;
- 3.4. with regard the competition law compliance programme referred to above, SEI undertakes to submit to the Commission a copy thereof within 90 days of confirmation of this Consent Agreement as an Order of the Tribunal.

4. ADMINISTRATIVE PENALTY

- 4.1. SEI agrees and undertakes to pay an administrative penalty in the amount of **R437 278.38 (Four Hundred and Thirty-Seven Thousand**

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Two hundred and Seventy-Eight Rands, Thirty-Eight cents). This amount does not exceed 10% of SEI turnover.

4.2. SEI shall pay the abovementioned amount to the Commission within 30 days from the date of confirmation of this Consent Agreement as an order of the Tribunal.

4.3. The administrative penalty shall be paid into the Commission's bank account, details of which are as follows:

Bank name: Absa Bank
Branch name: Pretoria
Account holder: Competition Commission Fees Account
Account number: 4087641778
Account type: Current Account
Branch Code: 632005
Reference: 2014Dec0766&2015Feb0054/SEI

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

5. COMPLIANCE

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

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6. FULL AND FINAL SETTLEMENT

6.1. This Consent Agreement is concluded in full and final settlement of the Commission's investigation under Case Nos. 2014Dec0766 and 2015Feb0054, and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and SEI relating to the conduct that is the subject of the Commission's investigation under Case No. 2014Dec0766 and 2015Feb0054.

FOR SUMITOMO ELECTRIC INDUSTRIES, LTD.

Dated and signed at Nagoya on the 28th day of May 2020.



Full names: Mitsuo Nishida

Designation: Representative Director, Executive Vice President

FOR THE COMMISSION

Dated and signed at PRETORIA **on the** 19TH **day of** JUNE **2020.**



TEMBINKOSI BONAKELE

Commissioner