



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO147Dec21

In the matter between:

The Competition Commission of South Africa

Applicant

And

Denso Corporation

Respondent

Panel: M Mazwai (Presiding Member)
AW Wessels (Tribunal Member)
Y Carrim (Tribunal Member)

Heard on: 22 December 2021

Decided on: 22 December 2021

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission Denso Corporation annexed hereto.



Presiding Member
Ms Mondo Mazwai

22 December 2021
Date

Concurring: Mr Andreas Wessels and Ms Yasmin Carrim

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

CT Case No:

CC Case No: 2012OCT0608 & 2017NOV0051 & 2012OCT0609 &

2017NOV0052

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

DENSO CORPORATION

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 DENSO CORPORATION, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (ii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Denso Corporation ("Denso") 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) (ii) of the Act, on the terms set out below.

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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 2012OCT0608/2017NOV051 & 2012OCT0609/2017NOV0052;
- 1.5. **“Consent Agreement”** means this agreement duly signed and concluded between the Commission and Denso;
- 1.6. **“Denso”** means Denso Corporation a 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. **“OEM”** means original equipment manufacturer;
- 1.8. **“NGK Insulators”** means NGK Insulators Ltd a company incorporated under the company laws of Japan, with its principal place of business situated at 2-56 Suda-cho, Mizohu-ku, Nagoya 467-8530, Japan.
- 1.9. **“Parties”** means the Commission and Denso;
- 1.10. **“Respondents”** means Denso and NGK Insulators;



1.11. “RFQ” means request for quotation; and

1.12. “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.

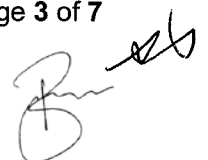
2. COMMISSION’S INVESTIGATION AND FINDINGS

2.1. The Commission has received information that suggests that Denso and NGK Insulators concluded a general agreement and/or were party to concerted practices to fix prices that they would quote to OEMs, divide markets and tender collusively in respect of RFQs in the market for the manufacture and supply of automotive components to OEMs, outside of South Africa, in contravention of sections 4(1)(b)(i), 4(1)(b)(ii) and 4(1)(b)(iii) of the Act.

2.2. The Commission’s investigation against Denso and NGK Insulators revealed the following cartel instances:

2.2.1. On or about 2010, Denso and NGK Insulators agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2010 RFQ issued by Toyota in respect of the 2012 Subaru BRZ and Toyota GT 86 vehicle models for the supply of Ceramic Substrates, also known as Monoliths (“Substrates”);

2.2.2. On or about 2008 Denso and NGK Insulators agreed and/or were party



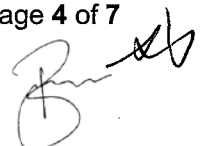
to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2008 RFQ issued by Nissan in respect of the 2012 Fuga and Safari vehicle models for the supply of Substrates;

2.2.3. On or about 2009, Denso and NGK Insulators agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2009 RFQ issued by Nissan in respect of the 2011 Micra, 2013 Almera, 2011 X-Trail and 2012 Infinity FX vehicle models for the supply of Substrates;

2.2.4. On or about 2004, Denso and NGK Insulators agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2004 RFQ issued by Toyota in respect of the 2006 Avensis vehicle model for the supply of Diesel Particular Filters ("DPFs"); and

2.2.5. On or about 2007, Denso and NGK Insulators agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2007 RFQ issued by Nissan in respect of the 2008 Murano vehicle model for the supply of DPFs.

2.3. The Commission considers that the conduct outlined above between Denso and NGK Insulators constitutes price fixing, division of markets and collusive tendering in contravention of sections 4(1)(b)(i),(ii) and (iii) of the Act.

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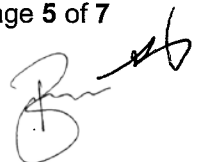
3. ADMISSION

- 3.1. Denso does not admit that it contravened section 4(1)(b) of the Act. The Commission did not insist on the admission of liability due to the insignificant nature of the effects of Denso conduct in South Africa.

4. FUTURE CONDUCT

Denso agrees to:

- 4.1. Summarise and provide the key portions of this Consent Agreement to members of the Denso Corporation Board of Directors within sixty (60) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 4.2. Continue to refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 4.3. Continue to implement and monitor the 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;
- 4.4. 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



4.5. undertake to continue to engage in competitive practices.

5. ADMINISTRATIVE PENALTY

5.1. Denso agrees and undertakes to pay an administrative penalty in the amount of R447 258 (**Four Hundred and Forty-Seven Thousand Two Hundred and Fifty-Eight Rands**). This amount does not exceed 10% of Denso turnover.

5.2. Denso 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.

5.3. The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission

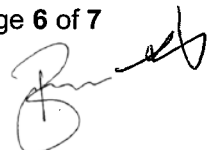
Bank: Absa Bank, Pretoria

Account Number: 4087641778

Branch Code: 632005

Ref: 2012OCT0608 & 2012OCT0609-Denso

5.4. 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.



6. COMPLIANCE

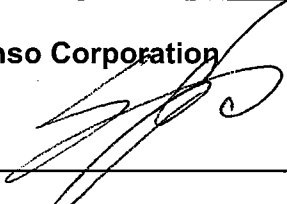
All compliance reports and proof of payments relating to this matter shall be forwarded to the Commission at CartelSettlements@compcom.co.za.

7. FULL AND FINAL SETTLEMENT

This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigations into the activities of Denso under case numbers 2012OCT0608/2017NOV0051 & 2021OCT0609/2017NOV0052 and concludes all proceedings between the Commission and Denso in relation to conduct relating to Substrates and DPFs.

Dated and signed at Kariya, Aichi, Japan on the 30th day of November 2021

For Denso Corporation


Name in Full: Shigeaki Sugimoto

Position Senior Director

Dated and signed at PRETORIA on the 14 day of DECEMBER 2021

For the Commission


Tembinkosi Bonakele
Commissioner