



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO104Aug20

In the matter between:

The Competition Commission

Applicant

And

MAHLE GmbH

First Respondent

MAHLE Behr GmbH & Co. KG

Second Respondent

Panel : M Mazwai (Presiding Member)
: E Daniels (Tribunal Member)
: I Valodia (Tribunal Member)

Heard on : 02 September 2020

Decided on : 14 September 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement between the Competition Commission and MAHLE GmbH, and MAHLE Behr GmbH & Co. KG annexed hereto.

**Presiding Member
Ms Mondo Mazwai**

14 September 2020

Date

Concurring: Mr Enver Daniels and Prof. Imraan Valodia

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT CASE NO:

CC CASE NO: 2014NOV0670

2014NOV0624

2015MAR0076

2015APR0210

2015JUN0403

In the matter between

THE COMPETITION COMMISSION

Applicant

And

MAHLE GMBH

First Respondent

MAHLE Behr GmbH & Co. KG

Second Respondent

FILING SHEET

BE PLEASED TO TAKE NOTICE that the applicant hereby files the settlement agreement concluded between the Competition Commission and, Mahle GMBH and Mahle Behr GmbH & Co. KG.

Signed at Pretoria _____ on the __24__ day of August 2020

Competition Commission

The Dti Campus, Building C, Mulayo

77 Meintjies Street

Tel: 012 763 8654/0715739370

Email: MbongiseniN@compcom.co.za

Ref: Mbongiseni Ndlovu/Mahle Consent CA

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:

Hebert Smith Freehills

Rosebank Towers 4th Floor

15 Biermann Avenue

Rosebank

2196

Ref: J Meijer/ S Payne

Tel: 010 500 2649

Fax: 011 327 6230

By Email: Stewart.Payne@hsf.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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- 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: 2014Nov0670,
2014Nov0624,
2015Mar0076,
2015Apr0210 &
2015Jul0403

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

MAHLE GMBH

First Respondent

MAHLE Behr GmbH & Co. KG

Second 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, MAHLE GMBH and MAHLE Behr GmbH & Co. KG, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) OF THE ACT.

Preamble

The Competition Commission, MAHLE GmbH and MAHLE Behr GmbH & Co. KG 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 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 complaints initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2014Nov0670; 2014Nov0624, 2015Mar0076, 2015Apr0210 and 2015Jul0403.
- 1.5 **“Consent Agreement”** means this agreement duly signed and concluded between the Commission, MAHLE and MAHLE Behr;
- 1.6 **“Denso”** means collectively Denso Automotive Deutschland GmbH, a company incorporated under the laws of Germany, with its principal place of business situated at Freisinger Strasse 21-23, D-85386 Eching, Germany, and 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 **“MAHLE”** means MAHLE GmbH, a company incorporated under the laws of Germany, with its principal place of business situated at Pragstrasse 26-46, D-70376 Stuttgart, Germany;
- 1.8 **“MAHLE Behr”** means MAHLE Behr GmbH & Co. KG, a company incorporated under the laws of Germany, with its principal place of business situated at Mauserstrasse 3, D-70469 Stuttgart, Germany;
- 1.9 **“MAHLE Group”** means the group of companies controlled by MAHLE, including MAHLE Behr, MAHLE Behr South Africa Proprietary Limited, MAHLE Filter Systems Japan Corporation, and MAHLE Electric Drives Japan Corporation (previously Kokusan Denki Company (Pty) Ltd);
- 1.10 **“Parties”** means the Commission, MAHLE and MAHLE Behr;
- 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 The Commission initiated the Complaint on the basis of information that it received suggesting that from about 2005 to 2009, MAHLE Behr and Denso concluded a general agreement and/or were party to a concerted practice when responding to tenders issued by original equipment manufacturers (“OEMs”), in

respect of the manufacture and supply of certain automotive components to certain OEMs outside of South Africa, in contravention of sections 4(1)(b)(i),(ii) and/or (iii) of the Act.

2.2 The Commission's investigation against MAHLE Behr revealed that from November 2005 to December 2009, Denso and MAHLE Behr had collusive contacts concerning the supply of Heating, Ventilation and Air Conditioning Units ("HVACs") for passenger cars to Volkswagen, Daimler and BMW outside the Republic of South Africa, with the overall aim to co-ordinate their pricing strategy vis-à-vis those customers.

2.3 The Commission considers that the conduct outlined above between Denso and MAHLE Behr constitutes a contravention of section 4(1)(b) of the Act.

3. FUTURE CONDUCT

MAHLE Behr agrees and undertakes to:

- 3.1 publish a statement concerning this Consent Agreement on the MAHLE Intranet, which is available to all employees, within thirty (30) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 3.2 refrain from engaging in conduct that may be in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;
- 3.3 continue to 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 includes mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;

- 3.4 submit details 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
- 3.5 undertakes henceforth to engage in competitive practices.

4. ADMINISTRATIVE PENALTY

- 4.1 MAHLE Behr agrees and undertakes to pay an administrative penalty in the amount of **R1 622 106 (One Million Six Hundred and Twenty-Two Thousand One Hundred and Six Only)**. This amount does not exceed 10% of MAHLE Behr's turnover.
- 4.2 MAHLE Behr 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 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: 2014Nov0670-Mahle Behr

- 4.4 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.

5. COMPLIANCE

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

6. FULL AND FINAL SETTLEMENT

- 6.1 This 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 MAHLE Group under case numbers 2014Nov0670, 2014Nov0624, 2015Mar0076, 2015Apr0210 and 2015Jul0403.
- 6.3 This agreement concludes all pending proceedings between the Commission and the MAHLE Group.



Dated and signed at Stuttgart on the 14 day of August 2020

For MAHLE GMBH



Michael Frick
Member of the Management Board/
Corporate Executive Vice President Finance

ppa. 

Jörg Kiefer
Vice President/Corporate Legal
Department / General Counsel

Dated and signed at Stuttgart on the 14 day of August 2020

For MAHLE Behr GmbH & Co. KG
represented by personally liable shareholder MAHLE Behr Verwaltung GmbH



Martin Wellhoeffer
Member of the Corporate Management
Committee/ Corporate Executive Vice
President Sales & Application Engineering

i.v. 

Julia Wagner
Director Corporate Legal Department
Automotive

Dated and signed at PRETORIA on the 24TH day of AUGUST 2020

For the Commission



Tembinkosi Bonakele
Commissioner