

SOUTH AFRICA / JUDGMENT

Competition Commission of South Africa v Robert Bosch GMBH; Bosch Electrical Drives Co Ltd (CO161Jan22) [2022] ZACT 47; [2022] 1 CPLR 6 (CT) (28 January 2022) [2022] ZACT 47

COURT

Competition Tribunal

BEFORE

AW Wessels, E Daniels, L Mncube

CASE / FILE NUMBER

CO161Jan22

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COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO161Jan22

In the matter between:

The Competition Commission of South Africa Applicant

And

Robert Bosch GMBH; Bosch Electrical Drives Co Ltd Respondents

Panel: AW Wessels (Presiding Member) E Daniels (Tribunal Member)

L Mncube (Tribunal Member)

Heard on: 28 January 2022

Decided on: 28 January 2022

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and Robert Bosch GMBH and Bosch Electrical Drives Co Ltd annexed hereto.

Date: 28 January 2022

Presiding Member Mr Andreas Wessels

Concurring: Mr Enver Daniels and Dr. Liberty Mncube

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

CT Case No:

CC Case No: 2016Mar0102 & 2016Mar0107 & 2016Mar0100 & 2015Dec0735

THE COMPETITION COMMISSION Applicant

ROBERT BOSCH GMBH First

Respondent

BOSCH ELECTRICAL DRIVES CO., LTD 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 AND ROBERT BOSCH GMBH AND BOSCH ELECTRICAL DRIVES CO., LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (ii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission, Robert Bosch GmbH and Bosch Electrical Drives Co., 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) (ii) 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. "Bosch Electrical" means Bosch Electrical Drives Co., Ltd., a company incorporated under the company laws of South Korea, with its principal place of business situated at Geumhoseonmal-gil 115, Bugang-myeon, ROK-30077, Sejong-si, South Korea;

1.3. "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;

1.4. "Commissioner" means the Commissioner of the Commission, appointed in terms of section 22 of the Act;

1.5. "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2016Mar0102, 2016Mar0107, 2016Mar0100 and 2015Dec0735;

1.6. “Consent Agreement” means this agreement duly signed and concluded between the Commission, Robert Bosch and Bosch Electrical;

1.7. “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;

1.8. “Robert Bosch” means Robert Bosch GmbH, a company incorporated under the company laws of Germany, with its principal place of business situated at Robert-Bosch- Platz 1, Gerlingen, Baden-Wurttemberg, Germany, and reference to Robert Bosch includes any legal entity in which Robert Bosch directly or indirectly owns at least 50% (fifty percent) of the equity interest, or controls at least 50% (fifty percent) of the voting shares;

1.9. “Parties” means the Commission, Robert Bosch and Bosch Electrical;

1.10. “Respondents” means Robert Bosch, Bosch Electrical and Denso;

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 has received information that suggests that for starter motors and windshield wipers, Denso and Robert Bosch concluded a general agreement and/or were party to concerted practices to fix prices that they would quote to original equipment

manufacturers (“OEMs”), divide markets and/or tender collusively in respect of Requests for Quotations (“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, Robert Bosch and Bosch Electrical revealed the following instances of collusion:

2.2.1. On or about 2009, Denso and Robert Bosch 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 [...] in respect of certain vehicles of a 2012 [...] Model for the supply of starter motors;

2.2.2. On or about 2008/2009, Denso and Bosch Electrical agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2008/2009 RFQ issued by [...] for the supply [...] of windshield wipers.

2.3. The conduct outlined above between Denso, Robert Bosch and Bosch Electrical constitutes price fixing, division of markets and collusive tendering in contravention of sections 4(1)(b)(i), (ii) and (iii) of the Act.

3. ADMINISTRATIVE PENALTY

3.1. Robert Bosch and Bosch Electrical agree and undertake to pay an administrative penalty in the amount of R1 211 908 (One Million Two Hundred and Eleven Thousand Nine Hundred and Eight Rands) in respect of starter motors and R1 190 015 (One Million One Hundred and Ninety Thousand and Fifteen Rands) in respect of windshield wipers, being R2 401 923 (Two Million Four Hundred and One Thousand Nine Hundred and Twenty-Three Rands) in total. This amount does not exceed 10% of Robert Bosch's annual turnover.

3.2. Robert Bosch or Bosch Electrical 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.

3.3. 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: [...]

Branch Code: 632005

Ref: 2016Mar0102 & 2016Mar0107Robert Bosch and Bosch Electrical

3.4. 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.

4. ADMISSION

4.1. Robert Bosch and Bosch Electrical do not admit that they contravened section 4(1)(b) of the Act. The Commission did not insist on an admission of liability due to the insignificant nature of the effects of Robert Bosch and Bosch Electrical's conduct in South Africa.

5. FUTURE CONDUCT

Robert Bosch and Bosch Electrical agree to:

5.1. prepare and circulate a statement summarizing the contents of this Consent Agreement to all relevant 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;

5.3. continue to implement its extensive competition law compliance programme, which is designed to ensure that all of its employees are informed about and understand Robert Bosch's competition law obligations and that they do not engage in 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. In particular, such compliance programmes 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 refrain from engaging in conduct in contravention of section 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 investigation into the activities of Robert Bosch and Bosch Electrical under Case No. 2016Mar0102, 2016Mar0107,

2016Mar0100 and 2015Dec0735 and concludes all proceedings pending between the Commission and Robert Bosch and Bosch Electrical in respect of the Commission's automotive components investigation.

Dated and signed at Gerlingen on the 15 day of December 2021

For Robert Bosch

Name in Full: Bettina Holzwarth

Name in Full: Dr. Mathias Traub Position: Senior Vice President

Position: Vice President and Bosch Electrical

Name in Full: Joachim Creutzburg Position: General Manager

Dated and signed at on the day of __2021

Tembinkosi Bonakele

Commissioner

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