

SOUTH AFRICA / JUDGMENT

Competition Commission v Faurecia Emissions Control Technologies South Africa (Pty) Ltd (CO023May20; 2014Nov0688) [2020] ZACT 102 (18 May 2020)

[2020] ZACT 102

COURT

Competition Tribunal

BEFORE

E Daniels, I Valodia, T Vilakazi

CASE / FILE NUMBER

CO023May20

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: CO023May20

In the matter between:

The Competition Commission Applicant

Applicant

Faurecia Emissions Control Respondent

Respondent

Technologies South Africa (Pty) Ltd

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.

Signed by: Enver Daniels

Signed at: 2020-05-18 13:58:42 +02:00

Reason: I approve this document

Presiding Member

Date

Mr Enver Daniels

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

THE COMPETITION COMMISSION

Applicant

FAURECIA EMISSIONS CONTROL TECHNOLOGIES Respondent

SOUTH AFRICA (PTY) LTD

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.

COMPETITION ACT, 89 OF 1998

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.

section 49D

section 58(1)(a)(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;

Competition Act, No. 89 of 1998

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, 7[...] M[...] Street, Sunnyside, Pretoria, Gauteng;

"Commission"

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

"Commissioner"

1.4 "Complaint" means the complaint initiated by the Commissioner in terms of section 49(1) of the Act under case number 2014Nov0688;

"Complaint"

1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Faurecia;

"Consent Agreement"

1.6 "Eberspacher" means Eberspacher Exhaust Technology GmbH & Co KG, company incorporated under the laws of Germany with its address at E[...] 2[...], 7[...] E[...] a[...] N[...], Germany.

"Eberspacher"

1.7 "Faurecia" means Faurecia SE, a company incorporated under the laws of France with its address at 2[...] -2[...] avenue d[...] C[...] P[...], 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, [...] A[...] Road, 6[...], Port Elizabeth;

"Faurecia"

1.8 "Parties" means the Commission and Faurecia;

"Parties"

1.9 "Respondents" means Eberspacher and Faurecia;

"Respondents"

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, 7[...] M[...] Street, Sunnyside, Pretoria, Gauteng.

"Tribunal"

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(8)(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 Eberspacher and Faurecia revealed the following:

2.2.1 During on or about 2003, Eberspacher 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. Eberspacher 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, Eberspacher 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 Eberspacher 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.

Sixty-six thousand eight hundred and eighty five rands and sixty six cents

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.

Sixty-six thousand eight hundred and eighty-five rands and sixty cents

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: 4[...]

Branch Code: 6[...]

Ref: 2[...]

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 C[...].

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.

Dated and signed at

on the

day of

For Faurecia Emissions Control Technologies South Africa (Pty) Ltd

Faurecia Emissions Control Technologies South Africa (Pty) Ltd

Name in Full: Sabine Reoule

Position: Country CFO

Dated and signed at on the day of 2020.

For the Commission

Commission

Tembinkosi Bonakele

Commissioner

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Prepared on 10 October 2026 · Esheria