

SOUTH AFRICA / JUDGMENT

Competition Commission v Panasonic Corporation (CO103Aug20) [2020] ZACT 63 (16 September 2020) [2020] ZACT 63

COURT

Competition Tribunal

BEFORE

M Mazwai, E Daniels, I Valodia

CASE / FILE NUMBER

CO103Aug20

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COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO103Aug20

In the matter between:

The Competition Commission Applicant

And

Panasonic Corporation Respondent

Panel: M Mazwai (Presiding Member)

E Daniels (Tribunal Member)

I Valodia (Tribunal Member)

Heard on : 02 September 2020

Decided on : 16 September 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement between the Competition Commission and Panasonic Corporation annexed hereto.

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

Preamble

The Competition Commission and Panasonic Corporation ("Panasonic") 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.

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 498(1) of the Act under case number 2014OCT0569, 2014NOV0689, 2015FEB0051, 2015MAY0267, 2015MAR090 and 2015Jun0309;

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

1.6 "Denso" means Denso Corporation ("Denso") 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 "Panasonic" means Panasonic Corporation ("Panasonic") a company incorporated under the laws of Japan, with its principal place of business situated at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan;

1.8 "Parties" means the Commission and Panasonic;

1.9 "Respondents" means Panasonic and Denso;

1.10 "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 Panasonic and Denso 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 tender collusively in respect of Requests for Quotations ("RFQs") in the market for the manufacture and supply of automotive components to OEMs, both within and 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 Panasonic and Denso revealed the following cartel instances:

2.2.1 On or about 2007, Panasonic and Denso agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively on RFQs in the market for the manufacture and supply of Clearance Sonar System (Honda NY Civic) to OEMs outside of South Africa.

2.2.2 On or about 2007 and 2008, Panasonic and Denso agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively on RFQs in the market for the manufacture and supply of Clearance Sonar System (Toyota: Lexus and Prius) to OEMs outside of South Africa.

2.2.3 On or about 2006, Panasonic and Denso agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively on RFQs in the market for the manufacture and supply of Relays (Toyota Prius) to OEMs outside of South Africa.

2.2.4 On or about 2005, Panasonic and Denso agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively on RFQs in the market for the manufacture and supply of TW Sensor (Honda) to OEMs, both within and outside of South Africa.

2.2.5 On or about 1998, Panasonic and Denso were part of a group meeting called "Rokusha-kai Group Meeting" wherein they agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively on RFQs in the market for the manufacture and supply of Ballast and LED driver to OEMs outside of South Africa.

2.2.6 On or about 2005, Panasonic and Denso agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively on RFQs in the market for the manufacture and supply of Ballasts (Daihatsu) to OEMs outside of South Africa.

2.2.7 On or about 2007, Panasonic and Denso were part of a group meeting called "Nichireki Group Meeting" wherein they agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively on RFQs in the market for the manufacture and supply of Air Conditioning Products and System to OEMs outside of South Africa.

2.2.9 The conduct outlined above between Panasonic and Denso constitutes price fixing, division of markets and collusive tendering in contravention of sections 4(1)(b)(i),

(ii) and (ii) of the Act

3 ADMISSION

3.1 Panasonic 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 Panasonic conduct in South Africa.

4. FUTURE CONDUCT

Panasonic agrees to:

4.1 prepare and circulate a statement summarizing the contents of this Consent Agreement to its employees, managers and directors that are employed in the specific automotive parts operations of Panasonic implicated in the cartel instances listed in paragraph 2.2, above, within sixty (60) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

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4.2 refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;

4.3 continue to implement and monitor its existing 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.;

4.4 submit a copy of such compliance programme to the Commission within thirty (30) days of the date of confirmation of this Consent Agreement as an order by the Tribunal; and

4.5 undertakes henceforth to engage in competitive practices

5 ADMINISTRATIVE PENALTY

5.1 Panasonic agrees and undertakes to pay an administrative penalty in the amount of R537 980 (Five Hundred and Thirty Seven Thousand and Nine Hundred and Eighty Rands). This amount does not exceed 10% of Panasonic's turnover.

5.2 Panasonic shall pay the abovementioned amount to the Commission within sixty (60) 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: [...]

Branch Code: 632005

Ref: 2015Jun0309-Panasonic

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 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 Panasonic under case nos. 2014OCT0569, 2014NOV0689, 2015FEB0051, 2015MA Y0267, 2015MAR090 and 2015Jun0309 and concludes all proceedings between the Commission and Panasonic.

Tembinkosi Bonakele

Commissioner

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Prepared on 10 October 2026 · Esheria