

SOUTH AFRICA / JUDGMENT

Competition Commission v Yazaki Corporation (CO079Aug20) [2020] ZACT 67 (21 August 2020) [2020] ZACT 67

COURT

Competition Tribunal

BEFORE

Y Carrim, A Ndoni, F Tregenna

CASE / FILE NUMBER

CO079Aug20

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COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO079Aug20

In the matter between:

The Competition Commission Applicant

And

Yazaki Corporation Respondent

Panel: Yasmin Carrim (Presiding Member), Andiswa Ndoni (Tribunal Member), Fiona Tregenna (Tribunal Member)

Considered in chambers on: 21 August 2020

Decided on:

21 August 2020

Consent Order

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

Preamble

The Competition Commission and Yazaki Corporation 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. "business day" means any day other than Saturday, Sunday or public holiday recognised in South Africa and only business days shall be included in the computation of any time expressed in days prescribed by this Consent Agreement;

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 2014Dec0772;

1.6. "Consent Agreement" means this agreement duly signed and concluded between the Commission and Yazaki;

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-cha, Kariya, Aichi 448-8661, Japan;

1.8. "OEM" means original equipment manufacturer;

1.9. "Parties" means the Commission and Yazaki, Sumitomo and Denso;

1.10. "Respondents" means Yazaki, Sumitomo and Denso;

1.11. "RFQ" means request for quotation;

1.12. "Sumitomo" means Sumitomo Electric Industries Limited and its affiliated companies¹. Sumitomo is a company incorporated under the company laws of Japan, with its principal place of business situated at 1-3-13, Motoakasaka, Minato-ku, Tokyo 107-8468, Japan;

1.13. "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.

1.14. "Yazaki"[1] means Yazaki Corporation. Yazaki is a company incorporated under the company laws of Japan, with its principal place of business situated at Mita- Kokusai Bldg., 4-28 Mita 1-chome, Minato-ku, Tokyo, 108-8333, Japan;

2. COMMISSIONS INVESTIGATION AND FINDINGS

2.1. The Commission has received information that suggests that Yazaki, Sumitomo and Denso 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.

2.2. The Commission's investigation against Yazaki, Sumitomo and Denso revealed the following specific cartel instances:

2.2.1. On or about 2005, Yazaki and Denso agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2005 RFQ issued by Honda in respect of the 2008 Accord vehicle model for the supply of instrument panel clusters or meters;

2.2.2. On or about 2007 or 2008 Yazaki and Sumitomo agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2007 / 2008 RFQ issued by Toyota in respect of the Global Vitz / Yaris vehicle model for the supply of wire harnesses;

2.2.3. On or about 2003, Yazaki and Sumitomo agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2003 RFQ issued by Honda in respect of the 2006 Civic vehicle model for the supply of wire harnesses;

2.2.4. On or about 2004, Yazaki and Sumitomo 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 Honda in respect of the 2007 CR-V vehicle model for the supply of wire harnesses;

2.2.5. On or about 2005, Yazaki and Sumitomo agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2005 RFQ issued by Honda in respect of the 2008 Accord vehicle model for the supply of wire harnesses;

2.2.6. On or about 2007, Yazaki and Sumitomo 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 Honda in respect of the 2009 Insight vehicle model for the supply of wire harnesses;

2.2.7. On or about 2007, Yazaki and Sumitomo 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 Honda in respect of the -2010 CR-Z (2XA) vehicle model for the supply of wire harnesses;=

2.2.8. On or about 2008, Yazaki and Sumitomo 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 Honda in respect of the 2011 Civic vehicle model for the supply of wire harnesses;

2.2.9. On or about 2005 or 2007, Yazaki and Sumitomo agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2005 / 2006 RFQ issued by Toyota in respect of the 2009 Prius vehicle model for the supply of wire harnesses;

2.2.10. On or about 2006, Yazaki and Sumitomo agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2006 RFQ issued by Toyota in respect of the Verso 595L vehicle model for the supply of wire harnesses;

2.2.11. On or about 2008, Yazaki and Sumitomo 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 Toyota in respect of the 2012 Lexus GS vehicle model for the supply of wire harnesses;

2.2.12. On or about 2009, Yazaki and Sumitomo 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 Toyota in respect of the Corolla Auris 130A vehicle model for the supply of wire harnesses;

2.2.13. On or about 2008, Yazaki and Sumitomo 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 Honda in respect of the 2010 CR-V vehicle model for the supply of oil level sensor wire harnesses;

2.2.14. On or about 2009, Yazaki and Sumitomo 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 Honda in respect of the 2012 CR-V vehicle model for the supply of wire harnesses; and

2.2.15. On or about 2006, Yazaki and Sumitomo agreed and/or were party to a concerted practice to fix prices, divide markets and tender collusively in relation to a 2006 RFQ issued by the Renault-Nissan Purchasing Organisation in respect of the Nissan 8-Platform vehicle model for the supply of wire harnesses.

2.3. The Commission has found that the conduct outlined above between Yazaki, Sumitomo 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 Yazaki 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 Yazaki conduct in South Africa.

4 FUTURE CONDUCT

Yazaki agrees to:

4.1 prepare and circulate a statement summarising the contents of this Consent Agreement to its employees, managers and directors within 14 (fourteen) business days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

4.2 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;

4.3 submit a copy of such compliance programme to the Commission within 60 (sixty) business days of the date of confirmation of this Consent Agreement as an order by the Tribunal.

5. ADMINISTRATIVE PENALTY

5.1. Yazaki undertakes to pay an administrative penalty in the amount of R3 898 675.15 (Three Million Eight Hundred and Ninety Eight Thousand Six Hundred and Seventy-Five Rand and Fifteen Cents). This amount does not exceed 10% of Yazaki's turnover.

5.2. Yazaki shall pay the abovementioned amount to the Commission within 30 (thirty) business 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: 2014Dec0772-Yazaki

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 investigation into the activities of Yazaki under case no. 2014Dec0772, 2014Nov0632, 2015May0283 and 2015May0284 and concludes all proceedings between the Commission and Yazaki.

Dated and signed at 1500 Mishuku, Susono, Shizuoka, Japan, on the 30th day of July, 2020

For Yazaki Corporation: Junichi Kitami

Position: Managing Executive Officer,

General Manager, Corporate Governance & Legal Affairs Division

For the Commission Tembinkosi Bonakele Commissioner

[1] Sumitomo's affiliated companies are Sumitomo Electric Wiring Systems South Africa (Pty) Ltd (SEWS SA); Sumitomo Wiring Systems Europe Limited (SEWS E) and Sumitomo Electric Wiring Systems Incorporated (SEWS).

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