



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO088Jun18

In the matter between:

The Competition Commission

Applicant

And

Toyoda Gosei CO Ltd

Respondent

Panel : Y Carrim (Presiding Member)
A Ndoni (Tribunal Member)
I Valodia (Tribunal Member)

Heard on : 15 August 2018

Decided on : 15 August 2018

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Toyoda Gosei CO Ltd annexed hereto marked "A".

Presiding Member
Ms Yasmin Carrim

15 August 2018
Date

Concurring: Ms Andiswa Ndoni and Prof. Imraan Valodia

Annexure 'A'

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

CT Case No.

CC Case No: 2012Aug0465

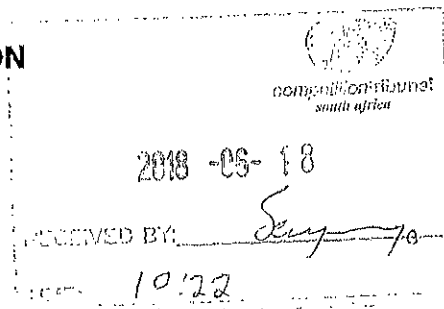
and 2016Nov0627

In the matter between

COMPETITION COMMISSION

And

TOYODA GOSEI CO., LTD



Applicant

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND TOYODA GOSEI CO., LTD. IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(i), (ii) AND (iii) OF THE COMPETITION ACT, 1998.

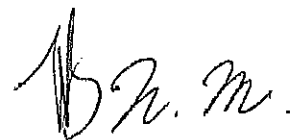
Preamble

The Competition Commission and Toyoda Gosei Co., Ltd. hereby agree that application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Competition 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.

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 Competition Commission, appointed in terms of section 22 of the Act;
- 1.4 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2012Aug0465 and 2016Nov0627;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Toyota;
- 1.6 "Days" means business days in South Africa;
- 1.7 "OSS" means automotive occupant safety systems, specifically in the context of the Complaint, airbags;
- 1.8 "OEM" means an Original Equipment Manufacturer;
- 1.9 "Parties" means the Commission and Toyota;
- 1.10 "RFQ" means Request for Quotation;
- 1.11 "TGSA" means Toyota Gosei South Africa (Pty) Ltd, a sixty five (65) percent-owned subsidiary of Toyota;



1.12 "**Toyoda**" means Toyoda Gosei Co., Ltd., a company incorporated under the laws of Japan, with its principal place of business situated at 1 Haruhinagahata Kiyosu, Aichi, 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.

2. BACKGROUND TO THE COMMISSION'S INVESTIGATION AND FINDINGS

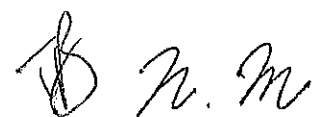
2.1 On 3 August 2012, the Commissioner initiated a complaint under and in terms of section 49(B)(1) of the Act into alleged prohibited practices relating to price fixing, market division and collusive tendering in contravention of section 4(1)(b)(i), (ii) and/or (iii) of the Act regarding the manufacture and supply of certain OSSs to OEMs against TRW Automotive Inc., Autoliv Inc. ("**Autoliv**") and Takata Corporation ("**Takata**") under case number 2012Aug0465 (the "**original complaint**").

2.2 On 21 November 2016, the Commissioner amended the original complaint to add additional respondents allegedly involved in prohibited practices as regards price fixing, market division and collusive tendering in contravention of section 4(1)(b)(i), (ii) and/or (iii) of the Act in respect of certain additional OSSs in relation certain additional OEMs (the "**amended complaint**").

2.3 The additional respondents are Tokai Rika Co., Ltd. and Toyoda. The conduct investigated based on the original and the amended complaints refers to the following OEMs: Volkswagen AG, BMW, Toyota Motor Corporation ("**Toyota**"), Honda Motor Corporation, Peugeot S.A and Daimler AG.

2.4 The firms set out in paragraphs 2.1 and 2.3 above shall hereinafter be referred to as the "**Respondents**".

2.5 The Commission's investigation revealed the following:



2.5.1 During or about the period from 2007 to date, some or all of the Respondents being competitors in the manufacture and supply of OSSs to OEMs agreed to fix prices, divide markets, collude on tenders issued by Toyota.

3. PROHIBITED PRACTICES ENGAGED IN BY TOYODA

3.1 The Commission's investigation revealed that pursuant to the agreements set out above, Toyoda, together with certain of the Respondents, engaged in two (2) instances of prohibited practices in respect of RFQs issued by Toyota, as follows:

3.1.1 From around 2007 to date, Toyoda, Takata and Autoliv colluded in respect of two (2) different RFQs (sourcing or resourcing) issued by Toyota in respect of certain supplies of OSSs products to Toyota. The conduct in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act related to Toyota Yaris [side airbag, curtain airbag and steering wheel/driver airbag] and Toyota AEQ phase 1 (Auris 132A) [passenger airbags and knee airbags].

3.1.2 Each instance of collusion in respect of an RFQ constitutes a contravention of the Act which separately attracts liability.

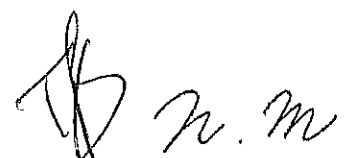
4. ADMISSION

Toyoda admits that it engaged in the prohibited practices set out in paragraph 3 above in contravention of section 4(1)(b)(i), (ii) and/or (iii) of the Act.

5. CO-OPERATION

Toyoda agrees to fully cooperate with the Commission in its investigation and prosecution, if any, of the remaining Respondents in respect of the Complaint. This cooperation includes, but is not limited to:

5.1. To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of Toyoda or under Toyoda's control, concerning the alleged prohibited practices set out in this

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Consent Agreement.

- 5.2. Testifying during the hearing of the Complaint, if any, in respect of the prohibited practices set out in this Consent Agreement.

6. FUTURE CONDUCT

Toyoda agrees to:

- 6.1. prepare and circulate a statement summarising the content of this Consent Agreement to its employees, managers and directors within thirty (30) Days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 6.2. refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 6.3. submit a copy of its existing competition law 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 to ensure fully that this is implemented so as to safeguard against its employees, management, directors and agents engaging in future contraventions of the Act; and
- 6.4. henceforth engage in competitive practices.

7. ADMINISTRATIVE PENALTY

- 7.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, Toyoda is liable to pay an administrative penalty.
- 7.2 Toyoda agrees and undertakes to pay a cumulative administrative penalty in the amount of **R6 162 958.34 (six million one hundred and sixty-two thousand nine hundred and fifty eight Rand and Thirty four cents)** in full and final settlement of the Complaint.
- 7.3 The administrative penalty does not exceed 10% of TGSA's annual turnover in

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the Republic of South Africa for the financial year ended March 2017.

7.4 Toyoda will pay the amount set out in paragraph 7.2 above to the Commission within thirty (30) Days of the confirmation of this Consent Agreement as an order of the Tribunal.

7.5 The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission Fee Account

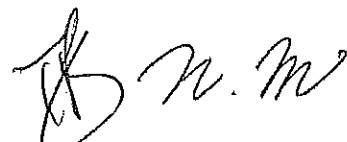
Bank: Absa Bank, Pretoria

Account Number: 4050778576

Branch Code: 323 345

Ref: 2012Aug0465/2016Nov0627/ Toyoda

7.6 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.

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8. Full and Final Settlement

This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of all prohibited practices engaged in by Toyoda and its competitors and concludes all proceedings between the Commission and Toyoda in respect of all prohibited practices under this investigation.

Dated and signed at Aichi, Japan on the 18th day of May 2018

For Toyoda Gosei Co., Ltd.

Naoki Miyazaki

President and Representative Director

Name in Full: Naoki Miyazaki

Dated and signed at PRETORIA on the 2nd day of JUNE 2018

For the Commission

Tembinkosi Bonakele

Competition Commissioner