



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO112Sep20

In the matter between:

The Competition Commission

Applicant

And

T.RAD Company Ltd

Respondent

Panel : M Mazwai (Presiding Member)
: E Daniels (Tribunal Member)
: A Roskam (Tribunal Member)

Heard on : 16 September 2020

Additional submission
received on : 21 September 2020

Decided on : 21 September 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement between the Competition Commission and T.RAD Company Ltd annexed hereto.

**Presiding Member
Ms Mondo Mazwai**

22 September 2020
Date

Concurring: Mr Enver Daniels and Mr Anton Roskam

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

**CT Case No:
CC Case No: 2014Nov0676**

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

T.RAD COMPANY LIMITED

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 T.RAD COMPANY LIMITED, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (ii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and T.RAD Company Limited ("T.RAD") 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. **"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 complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2014Nov0676;
- 1.5. **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and T.RAD;
- 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. **"T.RAD"** means TRAD Company Limited (including its subsidiaries) a company incorporated under the company laws of Japan with its principal place of business situated at 3-25-3 Yoyogi, Shibuya – Ku, Tokyo 151 -0053, Japan.
- 1.8. **"Parties"** means the Commission and T.RAD and Denso;
- 1.9. **"Respondents"** means T.RAD 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 Competition Commission of South Africa ("the Commission") has received information that suggests that T.RAD and Denso allegedly 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 Exhaust gas recirculation, Oil coolers, Radiators (for vehicles and motorcycles) and cooling fans, Intercooler and Automatic transmission fluid warmers to OEMs, in respect of 46 alleged cartel instances, 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. After investigation, the Commission concluded that T.RAD and Denso colluded in respect of forty-six (46) instances as listed in the attached **Annexure T1**.

2.3. The Commission further concluded that the conduct outlined above between T.RAD 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 T.RAD 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 T.RAD conduct in South Africa.

4 FUTURE CONDUCT

T.RAD agrees to:

- 4.1 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;
- 4.2 refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 4.3 continue with 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. In particular, this compliance programme includes mechanisms for the identification, prevention, detection and monitoring of any contravention of competition legislation, including the Act;
- 4.4 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

4.5 undertakes henceforth to engage in competitive practices.

5 ADMINISTRATIVE PENALTY

5.1 T.RAD agrees and undertakes to pay an administrative penalty in the amount of R500 000.00 (**Five Hundred Thousand Rands**). This amount does not exceed 10% of T.RAD's turnover for the 2017 financial year.

5.2 T.RAD 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.

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: 4087641778

Branch Code: 632005

Ref: 2014Nov0676

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 T.RAD under case no. 2014Nov0676 and concludes all proceedings between the Commission and T.RAD.

Dated and signed at T.RAD Co., Ltd. on 20th of August, 2020

For T.RAD Company Limited

A handwritten signature in black ink, appearing to read 'H. Kano', is written over a horizontal line.

Name in Full: Hiromi KANO

Position: Chairman & CEO

Dated and signed at PRETORIA on the 2ND day of SEPTEMBER 2020

For the Commission



Tembinkosi Bonakele
Commissioner

TRAD-Annexure T1

No	Instances	Affected Vehicles	Parties	Period of conduct
1	Intercooler	Mitsubishi Fuso (2007 model year Canter)	T.RAD and Denso	2005
2	Radiators and Intercooler	Hino (2009 model year small truck "Dutro")	T.RAD and Denso	2006
3	Radiators	Honda (2008 model year accord used in both V6 and L4 engine)	T.RAD and Denso	2005
4	Radiators and Cooling fans	Honda (2008 model year fit or Jazz)	T.RAD and Denso	2005
5	Radiators	Honda (2010 model year Fit or Jazz)	T.RAD and Denso	2009
6	Radiators	Honda (2012 model year CRV)	T.RAD and Denso	2009
7	Radiators and Cooling fans	Toyota (2008 model year RAV4)	T.RAD and Denso	2006
8	Exhaust gas recirculation	Toyota (2012/2013 model year NZ Hybrid engine)	T.RAD and Denso	2009
9	Oil Coolers	Caterpillar (2012 model year 320Estandard type excavator)	T.RAD and Denso	2005
10	Oil Coolers	Yamaha (Unknown model)	T.RAD and Denso	2005

11	Oil Coolers	Yamaha (General agreement)	T.RAD and Denso	2006
12	Oil Coolers	Yamaha (FJR1300 Development code 47D)	T.RAD and Denso	2008
13	Oil Coolers	Yamaha (FZ759)	T.RAD and Denso	2008
14	Oil Coolers	Yamaha (TMAX development code 59C)	T.RAD and Denso	2008
15	Oil Coolers	Yamaha (Annual Price Reduction)	T.RAD and Denso	2008
16	Intercooler	Mazda (HPL specification intercoolers for the 2011 next generation vehicle diesel engine)	T.RAD and Denso	2008
17	Intercooler	Mazda (LPL intercooler specification)	T.RAD and Denso	2009
18	Intercooler and Radiators	Toyota (2009 model year Hilux or IMV)	T.RAD and Denso	2006
19	Radiators	Daihatsu (Radiator for DOIN or next generation U-IMV [Toyota Avanza])	T.RAD and Denso	2009
20	Radiators and Cooling fans	FHI Subaru (Subaru Legacy [EZ5 project])	T.RAD and Denso	2007
21	Radiators and Cooling fans	FHI Subaru	T.RAD and Denso	2008

		(2011 model year Impreza and 2012 model year FR sport car)		
22	Radiators and Intercooler	Hino (2011 model Sankyo Radiator[Dyno and Dutro])	T.RAD and Denso	2009
23	Radiators	Honda (general agreements)	T.RAD and Denso	2007
24	Radiators	Honda (general agreements)	T.RAD and Denso	2008
25	Radiators	Honda (Thai Civic)	T.RAD and Denso	2009
26	Radiators	Honda (UK Civic)	T.RAD and Denso	2008
27	Radiators and Cooling fans	Honda (2013 model year accord model code 2GA)	T.RAD and Denso	2010
28	Radiators and Cooling fans	Suzuki (2010 model year Kizashi model code YW1)	T.RAD and Denso	2007
29	Radiators	Suzuki (2010 model year swift)	T.RAD and Denso	2007
30	Radiators	Toyota (Annual Price Reduction)	T.RAD and Denso	2000
31	Radiators	Toyota (2009 model year Hilux code IMV)	T.RAD and Denso	2006

32	Radiators	Toyota (2011 model year Camry [2007-2008])	T.RAD and Denso	2007
33	Radiators	Suzuki (radiator for a large sized super sport motorcycles)	T.RAD and Denso	2003
34	Radiators for Motorcycles	Suzuki (R600 the GSR600 and its R750 motorcycle)	T.RAD and Denso	2004
35	Radiators for Motorcycles	Suzuki (general agreement)	T.RAD and Denso	2006
36	Radiators for Motorcycles	Suzuki (GSX1300R, AN250, AN400 and XC291)	T.RAD and Denso	2005
37	Radiators for Motorcycles	Suzuki (GSR750, DL650 and GSXR1000)	T.RAD and Denso	2009
38	Radiators for Motorcycles	Yamaha (general agreement)	T.RAD and Denso	
39	Radiators for Motorcycles	Yamaha (3D Code XVS1300)	T.RAD and Denso	2006
40	Radiators for Motorcycles	Yamaha (23PCode XTS1200)	T.RAD and Denso	2007
41	Radiators for Motorcycles	Yamaha (39PCode FX8)	T.RAD and Denso	2008
42	Radiators for Motorcycles	Yamaha (20S)	T.RAD and Denso	2007

43	Radiators for Motorcycles	Yamaha (47D large motorcycle [FJR1300 SIC])	T.RAD and Denso	2008
44	Automotive transmission	FHI (FR Sport)	T.RAD and Denso	2009
45	Automotive transmission	Mazda (FN mission automatic transmission)	T.RAD and Denso	2007
46	Automotive transmission	Honda (2008 model year accord)	T.RAD and Denso	2005