

NON-CONFIDENTIAL VERSION

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 48/CR/Aug10

In the matter between:

The Competition Commission

Applicant

and

Sasol Chemical Industries Limited

Respondent

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and A Wessels (Tribunal Member)

Heard on : 24 February 2011

Decided on : 24 February 2011

Order – NON-CONFIDENTIAL VERSION

The Tribunal hereby confirms the attached consent order as agreed to and proposed by the Competition Commission and the respondent including addendum thereto and the heads of agreement between Sasol Polymers and Safripol (Pty) Ltd annexed thereto. (The latter is excluded in the non-confidential version because it constitutes confidential information).



N Manoim
Presiding Member

Y Carrim and A Wessels

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

CT CASE NO: 48/CR/Aug10

CC CASE NO: 2007NOV3338

In the matter between:

COMPETITION COMMISSION

Applicant

and

SASOL CHEMICAL INDUSTRIES LIMITED

Respondent

In re:

CT Case No.: 48/CR/Aug10

COMPETITION COMMISSION

Applicant

and

SASOL CHEMICAL INDUSTRIES LIMITED

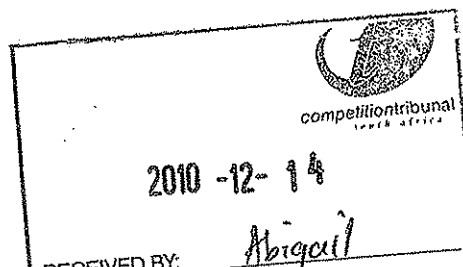
First Respondent

And

SAFRIPOL (PTY) LIMITED

Second Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND SASOL
CHEMICAL INDUSTRIES LIMITED, REGARDING ALLEGED CONTRAVENTION OF
SECTION 4(1)(b)(i) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED



Amal
NR 1

The Competition Commission and Sasol Chemical Industries Limited hereby agree that application be made to the Competition Tribunal for confirmation of this Settlement Agreement as an order of the Competition Tribunal, in terms of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Competition Act No. 89 of 1998, as amended, on the terms set out below.

1. Definitions and interpretation

In this Settlement Agreement, unless the context indicates otherwise, the following definitions shall apply:

- 1.1 "the Act" means the Competition Act 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 as a juristic person, with its principal place of business at Building C, Mulayo, Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;
- 1.3 "Commissioner" means the Commissioner of the Commission appointed in terms of section 22 of the Act;
- 1.4 "Competition Board" means the Competition Board, a statutory body established in terms of section 3(1) of the Maintenance and Promotion of Competition Act, 1979;
- 1.5 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B of the Act against Safripol, Sasol, SANS Fibres (Pty) Ltd ("SANS") and HOSAF Fibres (Pty) Ltd ("HOSAF") under case number 2007Nov3338;
- 1.6 "DTI" means the Department of Trade and Industry;
- 1.7 "Pricing Formula" means the propylene price formula as set out in the Supply Agreement;
- 1.8 "Safripol" means Safripol (Pty) Ltd, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa with registration number 2006/007270/07, with its principal place of business situated at The Campus, Eden Gardens Building, Corner Sloan and Main Roads, Bryanston as also the said company's predecessors-in-title as parties to the Supply Agreement;

- 1.9 "Sasol" means Sasol Chemical Industries Limited, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa, with its registered office situated at 1 Sturdee Avenue, Rosebank, South Africa;
- 1.10 "Sasol Polymers" means Sasol Polymers, a division of Sasol Chemical Industries Limited, with its principal place of business at 56 Grosvenor Street, Bryanston, South Africa;
- 1.11 "Supply Agreement" means the agreement between Sasol and Saffipol for the supply of propylene to Saffipol by Sasol signed on 8 December 1994, as amended;
- 1.12 "Settlement Agreement" means this Settlement Agreement duly signed and concluded between the Commission and Sasol; and
- 1.13 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act as a Tribunal of record, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria.

2. Background to the Commission's Investigation

The Commission records the background to its investigation as follows:

- 2.1. In October 2007, the DTI requested the Commission to consider opening an investigation against various firms operating in the polymers industry. The DTI's request in this regard was based on its observations in relation to polymer pricing, namely that an import parity benchmark seemed to be the standard practice used for pricing polymers in South Africa, including polypropylene.
- 2.2. The DTI alleged that, as a result, consumers were being charged relatively high prices, as if South Africa were a high cost net importing country of these products.
- 2.3. The Commission consequently conducted a preliminary analysis into pricing practices within the chemicals sector with specific reference to polymers; and subsequently initiated a complaint investigation in terms of section 49B(1) of the Act on 12 November 2007.

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2.4. The complaint was initiated against Sasol Limited, Safripol, SANS and HOSAF in respect of alleged contraventions of sections 4(1)(b)(i) and 4(1)(b)(ii); section 5(1) and sections 8(a) and 9(1) of the Act, through *inter alia* the following conduct:

2.4.1. excessive pricing through import-parity pricing of polypropylene and polyvinylchloride by Sasol Polymers;

2.4.2. excessive pricing through import-parity pricing in polyethylene terephthalate by SANS and HOSAF;

2.4.3. horizontal and vertical restrictive practices in the pricing of polypropylene and polyethylene by Sasol Polymers and Safripol;

2.4.4. horizontal restrictive practices in polyethylene terephthalate by SANS and HOSAF; and

2.4.5. price discrimination in polypropylene and polyvinylchloride by Sasol Polymers.

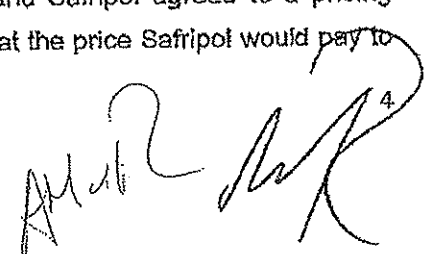
3. The Commission's Investigations and Findings

At the conclusion of its investigation, the Commission made the following findings:

3.1. Historic background

3.1.1. On 8 December 1994, Polifin Limited ("Polifin") and the company then known as Safripol entered into the Supply Agreement in terms of which Polifin agreed to supply Safripol with certain quantities of propylene. The Supply Agreement was concluded pursuant to the Competition Board's concerns with regards to the AECI/Sasol merger investigation, where AECI and Sasol sought to merge certain portions of their chemical businesses in Polifin (the predecessor of the Sasol Polymers division of Sasol Chemical Industries Limited). The Competition Board, on the basis of the undertakings made by the merged entity to supply Safripol / Sentrachem with monomer feedstocks (including propylene) on a non-discriminatory basis, concluded that it was not necessary to launch a formal investigation into the proposed merger.

3.1.2. In terms of the Supply Agreement, Polifin and Safripol agreed to a pricing formula which entails, among other things, that the price Safripol would pay to

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Polfin for propylene would be based on the domestic polypropylene prices of Polfin and Saffipol, which prices were required to be shared quarterly in terms of the Pricing Formula. The price of propylene would be derived by applying to the polypropylene prices a ratio of the average propylene prices to polypropylene prices in North West Europe and the USA over the previous three years. To this price would be added 25% of the standard freight charge for polypropylene from Rotterdam to Durban.

- 3.1.3. In March 2001 Polfin assigned all of its rights and obligations under the Supply Agreement to Sasol Polymers with effect from 1 September 2000. In July 2001 the company then called Saffipol likewise assigned all of its rights and obligations under the Supply Agreement to Sentrachem. In December 2006, Sentrachem in turn assigned all of its rights and obligations under the Supply Agreement to Main Street 415 (Pty) Limited (which has since changed its name to Saffipol (Pty) Limited).

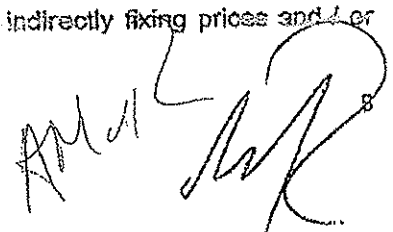
3.2. The alleged contravention of the Act

- 3.2.1. At the conclusion of its investigation into both Sasol Polymers and Saffipol's pricing practices, the Commission found *inter alia* that the parties had acted in contravention of section 4(1)(b)(i), due to the following conduct:

3.2.1.1. the Pricing Formula, and related provisions of the Supply Agreement and its operation, had resulted in Sasol Polymers and Saffipol sharing competitively sensitive information relating to the pricing of polypropylene;

3.2.1.2. the Pricing Formula, and related provisions of the Supply Agreement and its operation, including pricing and pricing of volume tranches, amount to the direct or indirect fixing of the selling price of polypropylene, with respect to which Sasol Polymers and Saffipol are in a horizontal relationship

- 3.2.2. With regard to the Pricing Formula and the related provisions of the Supply Agreement, the Commission found that Sasol Polymers and Saffipol had acted in contravention of section 4(1)(b)(i), by indirectly fixing prices and/or

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trading conditions, in that Sasol Polymers' and Safripol's pricing of polypropylene is characterised by the following:

- 3.2.2.1. pricing negotiations with polypropylene customers are made with reference to Safripol's historic local pricing and the prices of imported product that could be landed in South Africa. This is despite the fact that South Africa is a large net exporter of polypropylene; and
- 3.2.2.2. as a result of the Supply Agreement, Safripol is constrained in sourcing its propylene inputs and hence in increasing its production of polypropylene. This is due to the higher prices Safripol has to pay for propylene beyond 55 000 tonnes per annum (volume tranche), and, during the investigation period, it could not increase its supply of propylene from Sasol beyond 100 000 tonnes per annum. Safripol was constrained in not being able to offer more competitive polypropylene prices to achieve increased local sales;
- 3.2.2.3. the Pricing Formula incentivizes Sasol Polymers and Safripol to closely follow each other's price increases, since the increase of the price of propylene by one of them raises the price of propylene to the other, thereby reducing the margins of the firm that does not follow the price increase. Ultimately, the Pricing Formula incentivizes both Sasol and Safripol to charge the highest possible prices for polypropylene which, as a result of the lack of effective competition between Sasol and Safripol, are at levels set by competition from imports;
- 3.2.2.4. the Supply Agreement also removes any incentive that Sasol or Safripol might have unilaterally to lower prices for polypropylene. If they were to do so, then they would simply reduce their own margins, as the propylene price is determined as a percentage of the average polypropylene selling prices of both Sasol and Safripol;



- 3.2.2.5. Safripol and Sasol exchanged information retrospectively on average quarterly prices of polypropylene sales to the local market up to 2000, after which Safripol continued to send its prices to Sasol.
- 3.2.2.6. The Pricing Formula resulted in Sasol Polymers and Safripol's average prices for polypropylene (packed and delivered, exchanged quarterly) closely tracking each other.
- 3.2.3. The Commission also concluded that Sasol had charged excessive prices for polypropylene in contravention of section 8(a).
- 3.2.4. On 12 August 2010, the Commission referred to the Tribunal the section 4(1)(b)(i) complaint against Sasol and Safripol and the section 8(a) complaint against Sasol under Tribunal Case Number 48/CR/Aug2010.

4. Settlement discussions

In January 2010, Sasol approached the Commission with a view to exploring the possibility of settling the matter. After the referral of the Complaint to the Tribunal, the parties engaged in discussions with a view to settling the section 4(1)(b)(i) aspect of the complaint, independent of the section 8(a) matter. This Settlement Agreement is the outcome of those discussions.

5. Admissions

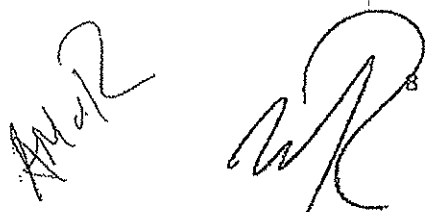
Sasol admits that the Pricing Formula and related provisions of the Supply Agreement, which contains restrictive terms regarding pricing and the pricing of volume tranches, and its implementation, amounted to the indirect fixing of a price or trading condition, in contravention of section 4(1)(b)(i) of the Act.



6. Agreement concerning future conduct

6.1. Sasol agrees and undertakes:

- 6.1.1. to prepare and circulate a statement summarising the content of this Settlement Agreement to the employees of Sasol Polymers and to its directors and relevant corporate governance structures within 30 (thirty) days of the date of confirmation of this Settlement Agreement as an Order of the Tribunal. Sasol confirms that it implemented a revised competition law compliance programme in 2009, a copy of which programme was submitted to the Commission in August 2009.
- 6.1.2. save for the implementation of the Supply Agreement strictly in accordance with its terms and as contemplated in clause 6.2, to refrain from sharing with Saffipol competitively sensitive information relating to polypropylene, including polypropylene prices and volumes;
- 6.1.3. to use its best endeavours to reach agreement with Saffipol regarding the amendment of the pricing and volume restriction provisions contained in the Supply Agreement within four (4) months from the date upon which this Settlement Agreement is made an Order of the Tribunal, or within such longer period as the Commission may agree (provided the Commission shall not withhold its agreement on good cause shown) so as to ensure that the Supply Agreement, as amended, does not result in a contravention of the Act. Sasol undertakes to use its best endeavours to ensure that the terms of the Supply Agreement will be amended to ensure the following:
 - 6.1.3.1. the price of propylene will be set independently from that of polypropylene and remove any requirement to exchange any information relating to polypropylene prices and volumes; and
 - 6.1.3.2. the second tranche of propylene purchased by Saffipol for the domestic market will no longer be sold at a higher price.
 - 6.1.3.3. For the avoidance of doubt this agreement does not prevent differential pricing in respect of volumes destined for export.



- 6.2. The Commission and Sasol recognise that the amendment of the Supply Agreement, in particular, the Pricing Formula and related provisions, cannot be unilaterally undertaken or enforced by Sasol or Sasol Polymers; and that Safripol has concluded a consent agreement in which it similarly undertook to renegotiate with Sasol the terms of the Supply Agreement relating to pricing and volumes. Accordingly, Sasol Polymers shall:
- 6.2.1. have the right to continue to implement the terms of the Supply Agreement, and to apply the Pricing Formula, until reaching an agreement with Safripol regarding the amendments of the Supply Agreement contemplated in clause 6.1.3;
 - 6.2.2. notify the Commission of any failure or refusal on the part of Safripol to engage constructively with Sasol in the process of reaching an agreement regarding the amendment of the terms of the Supply Agreement;
 - 6.2.3. upon reaching agreement with Safripol, forward the Supply Agreement, as amended, to the Commission in order to confirm that the provisions of the Supply Agreement, which the Commission has identified as contravening section 4 of the Act, have been suitably amended.
 - 6.2.4. In the event that Sasol Polymers and Safripol are unable to reach agreement on a mutually acceptable pricing formula within the four-month period envisaged in clause 6.1.3, then:
 - 6.2.4.1. The parties shall agree to jointly appoint an independent mediator to facilitate an agreement on an alternative pricing mechanism to the current contractual formulation.
 - 6.2.4.2. The independent mediator's mandate shall be jointly determined by Sasol Polymers and Safripol on the basis that neither party should be materially disadvantaged by the outcome of the mediation (with reference to the existing pricing formula) and that the new pricing formula complies with clauses 6.1.3.1, 6.1.3.2, and 6.1.3.3 above. The



mediation shall take place as soon as reasonably practicable after the parties have reached an impasse and it shall be completed within two (2) months from the end of the four-month negotiation process envisaged in this clause 6.1.3.

6.2.4.3. Upon completion of the mediation process the parties shall forward the Supply Agreement, as amended, to the Commission in order to confirm that the provisions of the Supply Agreement, which the Commission has identified as contravening section 4 of the Act, have been suitably amended.

6.2.4.4. In the event that the mediation process is not successful, then Sasol Polymers shall supply propylene to Safripol at a price which it determines is a reasonable price, having regard to prevailing market conditions. Safripol shall be entitled to approach the Competition Tribunal on an urgent basis to obtain any relief it deems appropriate in the circumstances.

7. Administrative penalty

7.1. Sasol Polymers is liable for and has agreed to an administrative penalty, in terms of sections 58(1)(a)(iii), 59(2) and (3) of the Act, in the amount of R 111 690 000.00 (one hundred and eleven million six hundred and ninety thousand rand). The administrative penalty represents 3% of Sasol Polymers' total annual turnover, for its financial year ending 2009, for turnover derived from its sale of polypropylene products.

7.2. The administrative penalty will be paid by Sasol Polymers to the Commission within sixty (60) days after the date of confirmation of this Settlement Agreement as an Order of the Tribunal. Sasol shall pay the administrative penalty into the Commission's bank account with the following details:

NAME: THE COMPETITION COMMISSION FEE ACCOUNT

BANK: ABSA BANK, PRETORIA

ACCOUNT NUMBER: 4050778576

BRANCH CODE: 323 345

- 7.3. The 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.

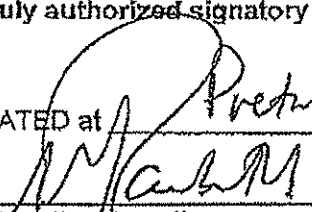
8. Full and final settlement

- 8.1. This Settlement Agreement, upon confirmation thereof as a consent order by the Tribunal, is in full and final settlement, between the Commission and Sasol, of all proceedings relating to section 4 and section 5(1) of the Act investigated under the Commission's case number; 2007Nov3338.
- 8.2. This Settlement Agreement does not include any allegations and the Commission's findings relating to the contravention of section 8(a), investigated under case 2007Nov3338, which allegations are the subject of ongoing proceedings.

DATED at Düsseldorf DE on 13 December 2010.


Andre de Ruyter
Senior Group Executive
Duly authorized signatory of Sasol Chemical Industries Limited

DATED at Pretoria on 10 Dec 2010.


Stefan Rampuruth
Commissioner
Competition Commission

Addendum to the Settlement Agreement between The Competition Commission of South Africa and Sasol Chemical Industries Limited

- 1 This addendum amends the settlement agreement concluded between the parties on 10 December 2010.
2. It is recorded that:
 - 2.1 on 17 February 2011, Sasol and Safripol concluded binding Heads of Agreement, annexed hereto marked "A";
 - 2.2 as more fully set out in clause 3 of the Heads of Agreement, the Heads will bind the parties thereto if the formal agreement contemplated in the Heads is not concluded;
 - 2.3 the Commission is satisfied that the Heads ensure that the supply agreement has been amended to comply with the principles set out in clauses 6.1.3.1 to 6.1.3.3 of the settlement agreement.
- 3 It is accordingly agreed that clauses 6.1.3 and 6.2 of the settlement agreement are hereby deleted.
- 4 Sasol undertakes that any amendment of the supply agreement or any substituted agreement will comply with the following principles:
 - 4.1. the price of propylene will be set independently from that of polypropylene sold in Southern Africa and will not contain any requirement to exchange any information relating to polypropylene prices and volumes sold in Southern Africa;
 - 4.2 excluding volumes referred to in clauses 4.5.1.2 and 4.6 of the Heads of Agreement, propylene purchased by Safripol for the domestic market will be sold in accordance with a uniform pricing formula; and

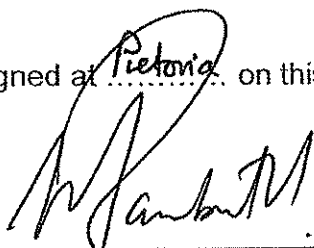


4.3 for the avoidance of doubt this agreement does not prevent differential pricing in respect of volumes destined for export.

5 Sasol undertakes further that forthwith on any amendment to the supply agreement and/or the Heads of Agreement concluded during a three year period following the signing of this addendum, it shall forward such amendment to the Commission for information.

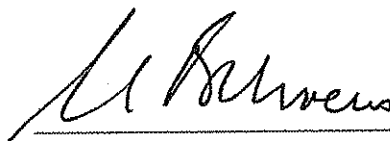
6. The parties agree that in the third line of clause 3.2.2.3 of the settlement agreement, the word "propylene" where it first appears should read "polypropylene".

Signed at Pretoria on this 24 day of February 2011.



Commissioner

The Competition Commission



Sasol Chemical Industries Ltd

Authorized Signatory.