

Media Release

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Competition Commission reaches a settlement with Foskor

The Competition Commission has entered into a consent agreement with Foskor in settlement of the phosphoric acid excessive pricing complaint. The Commission has filed an application with the Tribunal for the confirmation of this agreement.

The Commission's investigation of this was triggered by a complaint in 2007 from animal feed producers (AFPs) alleging that Foskor had contravened the Competition Act in that:

- It entered into a toll manufacturing agreement with SASOL. The latter would produce phosphoric acids and related products on behalf Foskor and Foskor would market these products. The Commission found that the agreement constituted a division of markets between Foskor and SASOL in contravention of the Competition Act.
- It was charging an excessive price for phosphoric acid.

Foskor produces phosphate rock and is the main local supplier of phosphoric acid, an important component in fertiliser and animal feed products. Foskor exports the vast majority of its phosphoric acid. Foskor's position as the main supplier of phosphoric acid enables it to control prices locally. Foskor's price to local buyers including an add-on equivalent to 75% of the freight costs to export customers (mainly in India). As soon as being made aware of the anti-competitive implications of such pricing, in August 2008, Foskor removed this component, substantially reducing prices to local customers. It has since maintained prices to local customers in line with the prices it receives from exports.

Under the agreement Foskor has committed to refrain from engaging in excessive pricing of phosphoric acid, and specifically not to revert to its previous pricing policies for the sale of phosphoric acid, phosphate rock, as well as MAP and DAP (two fertiliser products which it now sells directly to the retail farming community). It has also undertaken measures to increase transparency in the downstream market for fertiliser products.

In addition, Foskor admitted the collusion allegations and filed a leniency application with the Competition Commission under which it provided all relevant information regarding its toll production agreement with Sasol. Under the toll production agreement, Sasol undertook to produce phosphoric acid and related products for Foskor to sell in the local market meaning that, by agreement, local buyers who had been able to choose between Sasol and Foskor, now only had Foskor to turn to. Sasol admitted to this collusive arrangement and settled its part with the Commission in the agreement confirmed by the Tribunal on 20 May 2009.

As a result of the quick action and cooperation by Foskor and the significant reduction in prices payable by animal feed producers and end consumers, the Commission is not seeking a penalty against the firm.

Commissioner Shan Ramburuth noted that "these commitments mean that South Africa's large endowment of phosphate rock, mined by Foskor, yields competitively priced phosphoric acid and related products for SA consumers. This is also likely to lead to lower input costs in the production of field crops, such as maize."

ENDS

Further Info:

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