

Media Release

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Sasol agrees to divestiture in the fertiliser case

The Competition Commission reached a settlement agreement with Sasol Chemical Industries Limited ("SCI") on the 25th of June 2010, finalising the abuse aspect of the fertiliser case. This follows the settlement reached with SASOL on the collusion part of the case in which SASOL was fined R250 million. The remaining parties in the collusion case, Kynoch/Yara and Omnia are defending the case in the Tribunal.

The Commission has today filed an application for the confirmation of this settlement agreement by the Tribunal. The application will be heard on the 14 July 2010. The settlement relates to SCI's abuse of dominance, exclusionary conduct and price discrimination in the supply of ammonia and derivative fertilizer products. In terms of the agreement, within 12 months after the confirmation of the settlement by the Tribunal, Sasol has to:

- divest five of its fertiliser blending facilities located across the country with the exception of its Secunda plant;
- sell ammonium nitrate based fertilisers on an ex-works basis from its plants at Sasolburg and Secunda and depots within 100km of them;
- commit not to differentiate in its pricing of ammonium nitrate based fertilisers, other than on standard commercial terms such as volume and off-take commitments; which must be transparent and available to all customers;
- house the ammonia plants and business operations relating thereto as a business unit separate from Sasol Nitro and with separate audited books of account.

The parties have also agreed that SCI will within 25 months from confirmation of the agreement; cease all importation of ammonia, other than for internal use into the Republic of South Africa other than those imports on behalf of third parties that may be occasioned due to supply and logistical disruptions and plant maintenance shutdowns.

This settlement does not include an administrative penalty. The Commission is of the view that the structural and behavioural remedies agreed in this settlement, together with addressing cartel conduct that was the subject of previous settlement with SASOL, will effectively address competition concerns in the fertiliser market. The pricing and divestiture commitments will remove SASOL's incentive and ability to exclude competitors in fertiliser blending and retailing. We note that these remedies do not address the fact that SASOL will remain the sole local producer of ammonia.

If confirmed, this will be the first structural remedy that has been reached in a referred enforcement case. Up to now, this remedy was confined only to mergers. This remedy will ensure that there is competition in the blending and retail of fertilisers particularly in the ammonia based market.

According to the Competition Commissioner, Mr. Shan Ramburuth, "the settlement will ensure that SCI does not exclude its smaller rivals and means more participation in the industry and better prices for farmers. Fertiliser is a key input in the production of field crops accounting for a significant portion of the costs of production."

The settlement agreement will remain binding upon SCI for a period of 10 years after the disposal of the affected assets. In the meantime the Commission is still investigating the

fertilizer sector broadly relating to conduct in other fertiliser products.

Background to the complaints

The settlement finalises two cases investigated by the Commission against SCI, namely the 'Nutriflo- complaint' and the 'Profert complaint' filed on 3 November 2003 and August 2004, respectively. The Commission investigated the complaints and concluded that SCI had contravened the Competition Act. The case had two aspects to it, namely collusion and abuse of dominance. On the collusion side, the Commission concluded that SASOL, Omnia and Kynoch/Yara agreed to fix the price of ammonia based fertilizers. The second aspect of the case related to SASOL's alleged abuse of its dominance.

In the Nutri-flo complaint, the Commission, in its referral to the Tribunal (4 May 2005, case 31/CR/May05) alleged that SCI charged excessive prices by a series of stratagems that enabled it to sustain the price of ammonia at import parity prices. Further SCI allegedly engaged in conduct that was aimed at 'disciplining' or excluding Nutri-flo and other players from the markets for the supply of fertiliser. The Commission also alleged collusion between Saol, Omnia and Kynoch/Yara, which was the case settled in 2009 by Sasol.

In the Profert referral (25 May 2006, case no 45/CR/May06), the Commission alleged that Sasol had engaged in price discrimination to the detriment of Profert and had excluded Profert in other ways, such as refusal to supply. The Commission engaged in settlement negotiations on the basis that SCI would make reasonable endeavours to settle with the two complainants, Nutri-Flo and Profert, and the Commission understands settlements have been reached.

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