OUTCOME OF COMPETITION TRIBUNAL CASE **05 JUNE 2014**

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Competition Tribunal imposes R534 million penalty on Sasol for over charging

Today the Competition Tribunal found Sasol Chemical Industries Limited ("SCI"), a subsidiary of Sasol Ltd ("Sasol"), guilty of charging domestic customers excessive prices for purified propylene and polypropylene between January 2004 and December 2007.

The Tribunal stated that the price SCI charged Safripol, SCI's only external customer for purified propylene and a competitor of SCI downstream, *was to Safripol's detriment and inhibited its ability to effectively compete with SCI. In addition, SCI's locally charged polypropylene prices have had a significant adverse effect on the local plastic converters and caused them harm during the complaint period.*

The Tribunal imposed a penalty of R205.2 million in the case of purified propylene and R328.8 million in respect of polypropylene. It also imposed remedies for determining SCI's future pricing of both purified propylene and polypropylene that would see SCI's prices charged to local customers drop.

Purified propylene, produced from feedstock propylene, is an input in the production of polypropylene. Polypropylene is a key input for plastic converters who manufacture industrial and household plastic products. Hence the price of both purified propylene and polypropylene, as intermediate products, would have significant relevance to the price of household plastic goods such as buckets, brooms, storage containers and industrial products such as motor car parts, water tanks and the like.

The Tribunal's finding comes after a lengthy hearing into allegations of excessive pricing brought by the Competition Commission against SCI. The hearing ran over several months, starting on 13 May 2013, with final submissions in the case being made on 09 May 2014. In its complaint the Commission alleged that SCI was a dominant market player and that, between 2004 and 2007, it had charged excessive prices for purified propylene and polypropylene to the detriment of consumers and in contravention of the Competition Act. SCI denied the allegations. During the proceedings the Tribunal heard the evidence and testimony of 13 witnesses including 8 experts comprising industry, financial and economic experts on both sides.

Much of the Tribunal's judgment focused on the historical context within which Sasol was established, the significant State support and the protection which Sasol received over the years. These measures, the Tribunal found, contributed to Sasol Synfuels becoming one of the lowest cost producers of feedstock propylene, a by-product of Sasol's fuel production. Because of Sasol Synfuels' low feedstock propylene costs, SCI is a low cost producer of purified propylene and one of the lowest cost polypropylene producers in the world. SCI argued in the hearing that the Tribunal should ignore this cost advantage in arriving at its decision while the Commission argued that the cost advantage should be taken into account. The Tribunal decided to take the cost advantage into account, finding that SCI's market positions in the markets under scrutiny were *not the result of risk taking and innovation on its part since it has not engaged in any significant innovation in the production of either purified propylene or polypropylene, but rather due to past exclusive or special rights, in particular very significant historical state support for a considerable period of time.*

During the complaint period SCI charged Safripol two purified propylene prices – a higher "Tier 2" price and a lower "Tier 1" price. Applying a price-cost test, the Tribunal found that SCI's mark-ups of purified propylene prices over actual costs (including an appropriate return on capital) during the complaint period were in the range of 39.9% – 41.5% for Tier 2 sales to Safripol and in the range of 25.1% – 26.5% for Tier 1 sales to Safripol.

For polypropylene the Tribunal found that SCI's mark-up of its polypropylene price over actual costs (including an appropriate return on capital) during the complaint period was in the range of 26.9% – 36.5%.

The Tribunal further found, by comparing the average export netback price for deep sea exports of polypropylene (i.e. excluding exports into Southern Africa) to SCI's local prices, that SCI's local prices for polypropylene over the relevant cycle (FY02 – FY08) were on average 23% higher than average deep sea export prices.

The Tribunal also found that SCI's domestic prices charged for polypropylene were 41% and 47% higher for homopolymer and raffia grade polypropylene respectively in the complaint period compared to the discounted prices in Western Europe computed on the basis of feedstock costs comparable to SCI.

After having regard to the nature of the products, their importance as intermediate inputs in industrial development, market characteristics and circumstances, the objects of our Act understood in the context of the South African economy, the history of the dominant firm and how it acquired its dominance, we find that the purified propylene and polypropylene prices charged by SCI during the relevant period bear no reasonable relation to the economic value of these products, the Tribunal said in its judgment. Thus the Tribunal found that, based on the above, the prices charged by SCI were excessive.

Instead of imposing only an administrative penalty, the Tribunal opted for a reduced monetary penalty together with a forward-looking remedy that would directly change SCI's pricing behaviour since this would *provide both relief and certainty to SCI and its customers and would therefore be more appropriate.* Hence the Tribunal imposed a method for determining SCI's future pricing of both purified propylene and polypropylene.

The Tribunal concluded that SCI's exercise of market power and its excessive prices have *resulted in a missed opportunity for innovation and development for the domestic manufacture of downstream plastic goods. Cheaper polypropylene prices for local plastic converters could enhance local production thereby enabling them to compete more effectively with imported final plastic products, manufacture locally rather than overseas and introduce new products to South African consumers adding to their choice of product through greater innovation.*

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