

MEDIA RELEASE

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Commission reaches settlement with Air Products South Africa

The Competition Commission has reached a settlement agreement with Air Products South Africa Pty Ltd (“Air Products”) in terms of which Air Products has admitted that its agreement with Sasol Chemical Industries Limited (“Sasol”) has given rise to price fixing and market allocation, resulting in the prevention of competition in the industrial gases market.

In terms of the agreement, Air Products has agreed to pay an administrative penalty amounting to R2 762 978.70, which represents 1.5% of its 2011 annual turnover derived from its liquid nitrogen (LIN) and liquid argon (LAR) products.

Air Products produces, supplies and distributes gaseous nitrogen (GAN); gaseous oxygen (GOX); liquid argon (LAR); liquid nitrogen (LIN), and liquid oxygen (LOX), which are industrial and specialty gas products and chemicals. The gases are used in various industrial processes, namely, LAR in the manufacturing of high quality stainless steel; LIN as a coolant for food freezing; GAN in storage tank blanketing in the petroleum and chemical industries; and GOX in medicine for therapeutic purposes. It supplies these products to the Southern African region servicing the steel, stainless steel, chemical, petrochemical and engineering industries.

Sasol applied for and was granted conditional leniency in March 2009. This Consent Agreement follows a complaint initiated by the Commission in September 2009. The leniency application indicated that Air Products reached agreement with Sasol which limited the extent to which the two firms could compete in the supply and marketing of gas products. The Commission conducted its investigation and found that during 1998, the two firms entered into a suite of agreements in relation to the supply and marketing of specialty gases. The agreements include:

- the Co-operation Agreement which regulated the co-operation between Air Products and Sasol in the marketing of surplus GAN, GOX, LAR, and LIN from the Sasol One Oxygen plant;
- the Supply Agreement which regulated the supply of GAN, GOX, back-up LIN and LOX from Air Products’ Vanderbijlpark plant to the Sasol One Oxygen plant using pipelines owned by Sasol;
- the Management Agreement which regulated the management, operation and maintenance of the Sasol One Oxygen plant by Air Products; and
- the Utilities and Services Agreement which regulated the supply of certain utilities and services such as power, water, hydrogen and steam by Sasol to Air Products at the Sasol One Oxygen plant.

These Agreements came into effect on 4 April 1998, and were set to expire in April 2013, unless terminated by mutual consent or by giving notice.

The Commission found that Air Products and Sasol are competitors in the supply of LAR, LOX, LIN, GOX and GAN as they were, and continue to be, independent producers of these products and both have plants that have the capacity to produce these specialty gas products.

In addition to the penalty, Air Products agrees to abstain from all anti-competitive conduct, and to develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Competition Act, 1998. Air Products further agrees to amend the suite of Agreements in conjunction with Sasol to remove the anti-competitive restrictions.

ENDS

For more information:

Keitumetse Letebele, HOD: Communication

Cell: 082 783 3397, email: keitumetse@compcom.co.za

Themba Mathebula, External Coordinator

Cell: 084 896 0860, email: thembama@compcom.co.za