



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 48/CR/Aug10

In the matter between:

**The Competition Commission of South Africa**

**Applicant**

And

**Sasol Chemical Industries Limited**

**Respondent**

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Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	10 February 2012
Order issued on	:	13 February 2012
Reasons issued on	:	12 April 2012

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### **Reasons for decision: Application for further and better discovery**

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#### **Introduction**

- [1] On 26 January 2012 the Competition Commission ("Commission") filed an application to compel further and better discovery from the respondent, Sasol Chemical Industries Ltd ("SCI"). SCI is part of the Sasol group of which Sasol Limited is the holding company.
- [2] The Competition Tribunal ("Tribunal") heard this matter on 10 February 2012 and gave its order on 13 February 2012. On 16

February 2012 SCI requested reasons from the Tribunal for its decision.<sup>1</sup>

[3] The Tribunal's reasons for its decision are set out below.

#### **Tribunal's order**

[4] We note that most of the Commission's requested items of discovery in this matter were resolved between the Commission and SCI at the Tribunal hearing of 10 February 2012. Our order excluded such resolved items and we thus also do not deal with such resolved items in these reasons.

[5] In relation to the unresolved items of discovery between the Commission and SCI, the Tribunal on 13 February 2012 ordered SCI to discover the following documents/data within 10 days of the date of the Tribunal's order:

#### *Re items 34, 35 and 37 of the Commission's discovery request*

[5.1] To the extent not already discovered, and to the extent that it relates or is relevant to "Case G" (which describes the *PP2 investment*) (see explanation of Case G in paragraph 29 below):

[5.2] the spreadsheets in Excel format in relation to the investment scenarios evaluated by the *Project Turbo* team (see explanation of *Project Turbo* in paragraphs 26 to 29 below), including those appearing in the PDF document at discovery item 58;

[5.3] All documents and data relating to the initial projections of *Project Turbo* and subsequent developments, including calculations and assumptions on all updated economics;

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<sup>1</sup> Refer to email of 16 February 2012 from Nortons Inc to the Tribunal.

- [5.4] Excel spreadsheets underlying all of the figures dealt with in paragraphs 56.8.3 (a) to (h) in SCI's answering affidavit; and
- [5.5] For the investment scenarios other than "Case G" (i.e. "Case D: Minimum investment case" and "Case F: PE investment case") (see explanation of Case D and Case F in paragraph 29 below) SCI must discover all the Fuel Alternative Value (FAV) figures (see explanation of Fuel Alternative Value in paragraph 14 below).<sup>2</sup>

*Re items 21 and 22 of the Commission's discovery request*

- [5.6] Subject to the documents being in the possession of SCI:
  - [5.6.1] all documents and data relating to state support, including investment incentives and subsidies provided by government and related institutions, including but not limited to DTI, IDC and Eskom, provided to Sasol Synfuels and/or Sasol Polymers and/or Sasol Ltd since their inception, including the quantification of the value of that support, and any repayments made by them to the state; and
  - [5.6.2] all documents and data relating to engagements between Sasol and the state relating to the fuel regulatory regime including, but not limited to, guarantees on returns/margins in fuel products from 1989 to date.

**Background to discovery application**

- [6] The Tribunal provided for the discovery of documents/data in this matter in its directions of 15 August 2011.
- [7] The Commission served notices on SCI on or about 19 and 25 October 2011 requesting SCI to make discovery of certain documents. SCI delivered its response to the Commission's notices

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<sup>2</sup> SCI tendered the discovery of such FAV figures and therefore this item is not discussed in any further detail in these reasons.

on or about 23 November 2011 in which it made discovery of a number of but not all of the requested documents. In response to certain of the Commission's requests SCI indicated that it did not consider that the documents were relevant to any matter in dispute.

- [8] The Commission and SCI then on 9 December 2011 at a meeting between their legal representatives agreed that the Commission would on or before 13 January 2012 give notice to SCI of the further discovery it required, with an explanation for why it believed that it was entitled to that discovery. SCI would then respond. To the extent that disputes remained thereafter, the parties agreed that the Commission could bring an application to the Tribunal to compel further and better discovery. Furthermore, the Commission on 15 January 2012 addressed a further letter to SCI identifying certain shortcomings in its initial discovery. As stated in paragraph 1 above the Commission on 26 January 2012 filed an application to compel further and better discovery from SCI.

#### **Background to complaint initiation and referral**

- [9] In October 2007, the Department of Trade and Industry (DTI) requested the Commission to consider opening an investigation against various firms operating in the polymers industry in South Africa. This request was based on the DTI's 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. 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.
- [10] On 12 November 2007 the Commission in terms of section 49B(1) of Competition Act of 1998<sup>3</sup> ("the Act"), initiated a complaint

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<sup>3</sup> Act No. 89 of 1998, as amended.

investigation against SCI and Safripol (Pty) Ltd ("Safripol")<sup>4</sup>, amongst others<sup>5</sup>, 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.

- [11] The Commission's instant discovery application relates to its complaint referral of 12 August 2010 against SCI in relation to SCI's alleged contravention of section 8(a) of the Act.<sup>6</sup> The Commission in its referral alleges that SCI charged excessive prices in South Africa in the markets for propylene and polypropylene. To contextualise the discovery requests the background to these product markets and the specific allegations against SCI are discussed in some detail below.

### **Background to product markets and alleged conduct of SCI**

- [12] According to the Commission's excessive pricing complaint referral against SCI two relevant product markets are at issue, namely (i) the market for propylene; and (ii) the market for polypropylene. These product markets are in a vertical relationship since propylene is used as an input in the manufacturing of polypropylene, as explained in further detail below.

#### ***Upstream market: propylene***

- [13] The Commission in its complaint referral stated that Sasol produces propylene, a plastics monomer, as part of its synthetic fuels process. According to the Commission the only other producer of propylene in South Africa is the South African Petroleum Refinery (Sapref)<sup>7</sup>, a joint venture between Shell SA Refining and BP Southern Africa.<sup>8</sup>

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<sup>4</sup> Safripol and the Commission entered into a consent agreement in July 2010 in relation to the contravention of sections 4(1)(b)(i) and 5(1) of the Act. The Tribunal confirmed this settlement agreement on 25 August 2010.

<sup>5</sup> The complaint was also initiated against SANS Fibres (Pty) Ltd and HOSAF Fibres (Pty) Ltd.

<sup>6</sup> SCI and the Commission entered into a consent agreement in February 2011 in relation to the contravention of sections 4(1)(b)(i) and 5(1) of the Act. The Tribunal confirmed this settlement agreement on 24 February 2011. This settlement agreement however excluded the Commission's allegations in relation to SCI's contravention of section 8(a) of the Act.

<sup>7</sup> According to the Commission, Sapref sells all of the propylene that it produces to Safripol (see paragraphs 11 to 13 of complaint referral).

<sup>8</sup> Paragraphs 9 and 10 of the Commission's affidavit in support of the complaint referral.

- [14] The Commission submitted that it is relevant from a competition perspective whether Sasol uses feedstock propylene in its fuels business or its chemicals business. The background to this is that refinery-grade or impure propylene may be extracted, purified and sold, or alternatively it may be converted by further processing into fuel. This is so for both Sasol Synfuels and for conventional oil refineries. The price at which a propylene producer is indifferent as to whether the propylene is extracted or converted to fuel is known as the Fuel Alternative Value (FAV) of the propylene.<sup>9</sup>
- [15] Feedstock propylene is produced in Sasol's fuels portion of its business and purified propylene is produced in its chemicals division. SCI purchases feedstock propylene from Sasol Synfuels.
- [16] Propylene is the primary input in the manufacture of polypropylene, a plastics polymer. The Commission alleged that there is no substitute for propylene in the manufacture of polypropylene<sup>10</sup> and furthermore that the importation of propylene into South Africa is not feasible from a costs perspective.<sup>11</sup>
- [17] The Commission further found that Sasol was a dominant firm in the production and sale of propylene in South Africa and also alleged that this market was both uncontested and incontestable.<sup>12</sup> Of specific relevance to the discovery items under consideration is that the Commission alleged that Sasol's dominant position in the domestic market for propylene is not due to innovation or risk-taking, but rather due to past exclusive or special rights that it enjoyed, and in particular a history of state support to Sasol.<sup>13</sup>
- [18] The Commission furthermore found that Sasol's domestic prices for propylene bore no reasonable relation to the economic value of

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<sup>9</sup> See paragraph 107.1 of SCI's answering affidavit in the complaint referral.

<sup>10</sup> Also see paragraph 30.1 of the Commission's affidavit in support of the complaint referral.

<sup>11</sup> Paragraphs 53 and 82 of the Commission's affidavit in support of the complaint referral.

<sup>12</sup> Paragraphs 74 to 85 of the Commission's affidavit in support of the complaint referral.

<sup>13</sup> See paragraph 85 of the Commission's affidavit in support of the complaint referral.

propylene in the domestic market. This practice the Commission said contributed directly to higher polypropylene prices.<sup>14</sup>

[19] Sasol disputes that it charged excessive prices for propylene.

***Downstream market: polypropylene***

[20] Both Sasol and Sefripol sell polypropylene in South Africa, primarily to plastic product manufacturers. Both players however also export polypropylene to other African countries and other export destinations.<sup>15</sup>

[21] The Commission alleged that there is no polymer that is an effective substitute for polypropylene in the vast majority of applications for which it is used.<sup>16</sup>

[22] The Commission further found that Sasol was the dominant firm in the domestic market for the manufacture and supply of polypropylene and furthermore that this market was both uncontested and incontestable.<sup>17</sup>

[23] The Commission further stated that the extent of Sasol's market power in the domestic polypropylene market is readily apparent from the fact that its polypropylene prices were IPP-based in circumstances where domestic production vastly exceeded domestic demand.<sup>18</sup> The Commission concluded that Sasol's domestic prices for polypropylene bore no reasonable relation to the economic value of polypropylene in the domestic market. The Commission alleged that this was manifestly detrimental to input purchasers of polypropylene such as manufacturers of automobiles and plastic

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<sup>14</sup> Paragraphs 86 to 95 of the Commission's affidavit in support of the complaint referral.

<sup>15</sup> Paragraphs 16 and 17 of the Commission's affidavit in support of the complaint referral.

<sup>16</sup> Paragraph 29.2 of the Commission's affidavit in support of the complaint referral.

<sup>17</sup> Paragraphs 34 to 36 of the Commission's affidavit in support of the complaint referral.

<sup>18</sup> Paragraph 42 of the Commission's affidavit in support of the complaint referral.

packaging and thus ultimately also harmful to final customers of the latter products.<sup>19</sup>

[24] Sasol disputes that it charged excessive prices for polypropylene.

#### **Assessment of disputed discovery items**

[25] We below deal first with the discovery items relating to various Sasol investment scenarios (items 34, 35 and 37 of the Commission's request for further and better discovery) and second with the discovery items relating to past state support to Sasol (items 21 and 22 of the Commission's request for further and better discovery).

#### ***Items relating to Sasol investment scenarios: items 34, 35 and 37 of the Commission's discovery request***

[26] Of relevance to a proper understanding of the nature of the discovery items under consideration is that Sasol increased its propylene and polypropylene production capacities as a result of its implementation of a capacity expansion project named *Project Turbo*. According to the Commission's findings, this project incorporated *inter alia* the construction of a new catalytic cracker, primarily to produce additional high octane petrol but also partly to produce additional propylene and ethylene (another plastics monomer), as well as the reconfiguration of Sasol's propylene collection and splitting system. According to the Commission the combined effect of this was an increase in Sasol's propylene capacity.<sup>20</sup>

[27] SCl in its answering affidavit stated that it initiated *Project Turbo* in order to meet anticipated changes to fuel specifications in South Africa. These changes required the removal of lead, the reduction of benzene and the reduction of olefins in petrol. Changes in the octane grades of petrol were also foreseen. Furthermore, various changes to the diesel specifications were anticipated, notably a reduction in the

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<sup>19</sup> Paragraphs 56 to 73 of the Commission's affidavit in support of the complaint referral.

<sup>20</sup> Paragraph 18 of the Commission's affidavit in support of the complaint referral.

sulphur level. The eventual introduction of certain new clean fuel specifications meant that the South African oil companies had to alter their refining processes. Therefore in the early 2000s Sasol embarked on a process of identifying the optimal path to achieve the clean fuel specifications. This process and the subsequent investments are referred to within Sasol as *Project Turbo*.

- [28] One of the technology options and solutions that Sasol considered was investing in a novel Selective Catalytic Cracker (SCC) to process the low octane streams to a combination of high octane fuel streams and additional monomers. Investing in an SCC called upon Sasol Polymers to consider its options to convert increased propylene and ethylene volumes into polymer products. In this context Sasol's so-called *PP2 investment* was conceived.
- [29] When considering this investment into the SCC technology, Sasol's *Project Turbo* team scrutinised and evaluated several investment scenarios. These scenarios included:
  - [29.1] a minimum investment case (referred to as '*Case D*'), which involved only the remediation of fuel to meet the clean fuel specifications;
  - [29.2] a so-called PE investment case (referred to as '*Case F*'), where the assumed size of the SCC was increased above that required to meet the clean fuel specifications as to generate additional ethylene feedstock; and
  - [29.3] a so-called PP investment case (referred to as '*Case G*'), which entailed the investment in the same sized SCC as for *Case F* to meet the clean fuels requirements, to maximise the availability of ethylene feedstock and to additionally invest in the polypropylene value chain. Sasol consequently opted for the investment in *Case G*.

- [30] In paragraphs 34 and 35 of the Commission's discovery request it sought discovery of documents and data relating to all initial projections of *Project Turbo* and subsequent developments; and in paragraph 37 it sought discovery of the spreadsheets that underlie all of the figures set out by SCI in certain paragraphs of its answering affidavit, which in substance refer to the costs and returns of all the above-mentioned expansion plans SCI contended that it contemplated i.e. the above-mentioned investment Case D and Case F, as well as the plan it ultimately settled on as the most cost-effective i.e. Case G.
- [31] The Commission argued that the above-mentioned investment decisions are substantial decisions about capacity expansion and wanted access to Sasol's assumptions at the time about costs and prices and determinations in regard to the Fuel Alternative Value (also see paragraph 14 above) and costs and prices of feedstock propylene.<sup>21</sup>
- [32] SCI argued that it discovered all spreadsheets relating to Case G, which describes the *PP2 investment*, which also contain the operating, selling and financial data and resulting economics supporting the decision to build *PP2*.<sup>22</sup> SCI further indicated that it was unwilling to provide to the Commission the underlying data other than those which relate directly to the Case G spreadsheets.<sup>23</sup>
- [33] The Commission argued that it was not given any of the underlying data for investment Case G<sup>24</sup> and that it required the data in order to assess the spreadsheets SCI already provided. The Commission further indicated that it wished to examine the source material and perform its own calculations using different input data.

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<sup>21</sup> Page 55 of the transcript.

<sup>22</sup> See SCI's answering affidavit in the discovery application, paragraph 87.

<sup>23</sup> See SCI's answering affidavit in the discovery application, paragraph 89.

<sup>24</sup> Transcript page 60.

[34] However SCI at the hearing objected to the discovery of information relating to the above-mentioned investment scenarios described as *Case D* and *Case F* since it was of the view that it did not form part of any material case and went beyond the ambit of the complaint and the Commission's complaint referral in this matter. SCI however willingly tendered the discovery of underlying data in relation to *Case G*, as well as all relevant Fuel Alternative Values, although it still maintained that the information was not relevant to the complaint referral.<sup>25</sup>

[35] The Tribunal in relation to items 34, 35 and 37 of the Commission's request for further and better discovery limited the discovery to be made by SCI to the extent that it relates or is relevant to *Case G*. Therefore these three discovery items do not warrant any further discussion in these reasons (see paragraph 34 above).

***Items relating to state support: items 21 and 22 of the Commission's discovery request***

***Background to Commission's request***

[36] The Commission in its discovery request sought all documents and data relating to state support, including investment incentives and subsidies provided by government and related institutions to Sasol Synfuels and/or Sasol Polymers and/or Sasol Ltd since their inception, including the quantification of the value of that support. The Commission also requested all documents and data relating to engagements between Sasol and the state relating to the fuel regulatory regime including, guarantees on returns/margins in fuel products from 1989 to date. Further, the Commission wanted Sasol to quantify any repayment of historic state support it received.<sup>26</sup>

[37] The Commission in its complaint referral directly and expressly pleaded that Sasol benefitted from a history of state support and that

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<sup>25</sup> Transcript pages 60 to 67.

<sup>26</sup> See page 10 of the transcript.

this was potentially relevant to SCI's dominance in the domestic market for polypropylene.<sup>27</sup> The Commission further argued that the fuel regulatory regime also amounts to a form of state support<sup>28</sup> since it "*guarantees margins to the fuel producers which include Sasol*".<sup>29</sup>

- [38] The Commission submitted that it should analyse the extent of the state support that Sasol received and thus required SCI to disclose documents reflecting the nature of the support (i.e. the different forms of support), the extent of the support and how these support measures were allocated across specific components of Sasol's investment programmes, including documents that show the allocation to individual production units, including Sasol's Synfuels Cracker Unit.
- [39] The Commission at the hearing further argued that "*structural conditions in the market are one of the key indicators to working out whether a firm is charging excessive prices. As part of the engagement into the firm's position in the market you must ask has it got there due to risk and innovation, is it a super dominant firm because it has a patent, because it has innovative technology or is it a super dominant firm because there is a history of state support and it has an entrenched monopoly position because it was put there by the state and it's unchallenged*".<sup>30</sup> It further contended that "*Sasol's position in the market, whether you say it's dominance or super dominance, is a result of a history of state support and not due to innovation or risk taking*"<sup>31</sup> and that "*[o]ne of the key allegations that the Commission makes in respect of both the excessive price for propylene and polypropylene is not just Sasol's dominant position but how it got there in the history of state support*".<sup>32</sup>

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<sup>27</sup> See paragraph 54 of the Commission's affidavit in support of the complaint referral.

<sup>28</sup> See the Commission's founding affidavit in the discovery application, paragraph 28.

<sup>29</sup> Transcript page 10.

<sup>30</sup> Transcript page 7.

<sup>31</sup> Transcript page 8.

<sup>32</sup> Transcript page 8.

- [40] As stated above the Commission alleged that the relevant markets in question are "incontestable"<sup>33</sup> and further argued that "*economic literature says that there are particular types of markets in which new entry will never be possible and it's in those markets that one should be concerned to regulate pricing, to monitoring excessive pricing. The literature says that those are particularly markets where the entrenched position is as a result of a history of state support so that is a relevant issue*".<sup>34</sup> The Commission therefore argued that Sasol is "*precisely the type of firm that Competition Authorities should be concerned to look at and whose prices should be scrutinised*".<sup>35</sup>

#### *SCI's reply*

- [41] SCI conceded that state support was a factor in the establishment of Sasol, but alleged that the state investment was fully repaid before Sasol commenced producing polypropylene.<sup>36</sup>
- [42] SCI further argued that the extent of state support that it historically received was entirely irrelevant to the issues in the complaint referral. Furthermore SCI stated that Sasol Polymers did not rely on state support as "*a special cost advantage*" in the excessive pricing case, nor did Sasol Polymers rely for that purpose on the actual fuel price outside of the BFP determination by the DME and its application in the transfer pricing formula.<sup>37</sup>

#### *Assessment*

- [43] SCI conceded that "*the material fact for the purposes of a section 8(a) allegation in our submission is whether first of all the firm in question is a dominant firm*".<sup>38</sup> The question that we thus have to answer in this discovery application is if the manner in which a firm

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<sup>33</sup> *Inter alia* transcript page 16.

<sup>34</sup> Transcript page 13.

<sup>35</sup> Transcript page 15.

<sup>36</sup> See paragraph 87.2 of SCI's answering affidavit in the complaint referral.

<sup>37</sup> See SCI's answering affidavit in the discovery application, paragraph 69.

<sup>38</sup> Page 20 of the transcript.

acquired or maintained dominance could be relevant to the competition assessment of alleged excessive pricing.

- [44] To contextualise the issue of state support we note that such support is normally provided to sectors, or firm(s) within a sector or region, with a wider public interest objective i.e. with the aim of benefitting society in general or the economy as a whole. However, state support could affect markets or the characteristics of markets in a number of ways. From a competition perspective state support provided on a selective basis to a specific firm in certain circumstances may confer an advantage to that firm over its competitors in a specific relevant market. Such support could affect the position that such a firm has in the relevant market and may in the longer term distort (future) competition in that market.
- [45] State support may for example affect the possibility of entry into a market by significantly raising the relative cost to new firms of entering a market. Economic theory predicts that significant competition benefits would flow from the entry or the threat of entry by new firms into a market *inter alia* by stimulating efficiency in (an) incumbent firm(s) in that market. Of specific relevance to the issue of dominance in the context of this discovery application is that state support given to a specific entity may raise entry barriers so that potential future competition in the relevant market is diminished or prevented. Historic state support may thus be of relevance to the assessment of barriers to entry into a relevant market and barriers to entry are undeniably and uncontroversially relevant to an assessment of alleged abuse by a firm of its dominance in a relevant market.
- [46] State support may also affect the nature of competition in a market and market outcomes, particularly where it has a differential impact on individual firms in a market. For example state support may change the costs and hence influence the production-related and other decisions of (a) firm(s). It may for example affect the incentives

and behaviour of a recipient firm to compete strongly in the market, improve its internal efficiency and reduce its costs.

- [47] We however note SCI's contention that Sasol Polymers will not rely on state support as "*a special cost advantage*" (see paragraph 42 above). The Commission in response to this however argued that it was irrelevant whether Sasol wished to rely on state support as "*a special cost advantage*" in this case since the Commission required the information relating to state support in support of its own excessive pricing case.<sup>39</sup>
- [48] We accept the Commission's latter argument since the issue is not only whether Sasol wishes to rely on this issue, but whether it is relevant in this excessive pricing context. As a specialist Competition Tribunal we consider it relevant to know if a firm's alleged dominant position in a market is the result of its own risk taking and innovative approach to that market or due to a history of state support provided to that firm.
- [49] In conclusion: we concur with the Commission's view that a history of state support to a particular firm may be informative to understanding that firm's position in the relevant market. We specifically note that state support under certain circumstances could create market entry barriers and potentially allow a firm to built and exploit market power in a relevant market. State support therefore may increase the potential for anti-competitive behaviour of a firm if it allows the recipient firm to gain or maintain a dominant position in a relevant market and the potential long term structural consequences of such support are highly relevant to abuses of dominance. In the instant abuse of dominance context information relating to SCI's alleged historic state support therefore at the very least constitutes circumstantial evidence.

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<sup>39</sup> See the Commission's replying affidavit in the discovery application, paragraph 18.2.

[50] A history of state support may furthermore potentially be of relevance to the determination of an appropriate penalty in a section 8(a) case, since the Tribunal in the case of an excessive price contravention must when determining an appropriate penalty amount consider *inter alia* "the market circumstances in which the contravention took place".<sup>40</sup> A history of state support to a firm that has been found to contravene the Act by charging excessive prices to its customers may be relevant market circumstances to consider in the determination of an appropriate penalty.

[51] For the above reasons we consider the historic state support that Sasol received and channelled to specific divisions within Sasol, potentially including SCI, as contextually relevant to the competition analysis of SCI's alleged excessive pricing. Therefore we ordered SCI to discover documents relating to historic state support, subject to such documents being in SCI's possession.

### **Conclusion**

[52] As stated in paragraph 5 above the Tribunal on 13 February 2012 ordered SCI to discover certain documents and data. For the sake of completeness the Tribunal's order in this matter is annexed hereto as "Annexure A".

  
ANDREAS WESSELS

12 April 2012  
DATE

**Norman Manoim and Yasmin Carrim concurring**

Tribunal researcher: Nicola Ilgner

For the Applicant: Adv M Wesley instructed by Knowles Husain  
Lindsay Inc.

For the Respondent: Adv J Wilson instructed by Nortons Inc.

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<sup>40</sup> Section 59(3)(d) of the Act.

IN THE COMPETITION TRIBUNAL

THE REPUBLIC OF SOUTH AFRICA

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The Competition Commission of South Africa

Applicant

And

Sasol Chemical Industries Limited

Respondent

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Panel : Norman Manoim (Presiding Member)  
Yasmin Carrim (Tribunal Member)  
Andreas Wessels (Tribunal Member)  
Heard on : 10 February 2012  
Order issued : 13 February 2012

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**ORDER: APPLICATION BY THE COMPETITION COMMISSION FOR FURTHER  
AND BETTER DISCOVERY**

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After having heard the parties in this application the Competition Tribunal ("Tribunal") orders as follows:

1. To the extent that there was an agreement reached or a concession made regarding the Commission's request for further and better discovery at the hearing on 10 February 2012, the Tribunal for that reason, does not make an order in relation to such items.
2. The respondent is ordered to discover the following documents/data within 10 (ten) business days of the date of this order:

**Re items 21 and 22 of request**

3. Subject to the documents being in the possession of Sasol Chemical Industries Limited (SCI):

3.1. all documents and data relating to state support, including investment incentives and subsidies provided by government and related institutions, including but not limited to DTI, IDC and Eskom, provided to Sasol Synfuels and/or Sasol Polymers and/or Sasol Ltd since their inception, including the quantification of the value of that support, and any repayments made by them to the state; and

3.2. all documents and data relating to engagements between Sasol and the state relating to the fuel regulatory regime including, but not limited to, guarantees on returns/margins in fuel products from 1989 to date.

**Re items 34, 35 and 37 of request**

4. To the extent not already discovered, and to the extent that it relates or is relevant to "Case G" (which describes the PP2 investment):

4.1. the spreadsheets in excel format in relation to the investment scenarios evaluated by the Project Turbo team, including those appearing in the PDF document at discovery item 58;

4.2. All documents and data relating to the initial projections of Project Turbo and subsequent developments, including calculations and assumptions on all updated economics; and

4.3. Excel spreadsheets underlying all of the figures dealt with in paragraphs 56.8.3 (a) to (h) in the answering affidavit.

5. For the investment scenarios other than "Case G" (i.e. "Case D: *Minimum investment case*" and "Case F: *PE investment case*") SCI must discover all the Fuel Alternative Value (FAV) figures.



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**Norman Manoim**  
**Presiding Member**

**Concurring:** Yasmin Carrim and Andreas Wessels