COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: IR051Jun25

In the matter between:

Safripol Proprietary Limited	Applicant
And	
Sasol South Africa Limited	First Respondent
The Competition Commission	Second Respondent

Panel	:	G Budlender (Presiding Member)
	:	T Vilakazi (Tribunal Member)
	:	I Valodia (Tribunal Member)
Heard on	:	29 October 2025
Last submission on	:	20 November 2025
Order issued on	:	27 March 2026
Reasons issued on	:	27 March 2026

REASONS FOR DECISION

Introduction

1. On 29 October 2025, the Competition Tribunal ("Tribunal") heard an application by Safripol (Pty) Ltd ("Safripol") for interim relief against Sasol South Africa Ltd ("Sasol") and the Competition Commission ("Commission"). The application concerns the terms on which Sasol supplies products to Safripol.

2. Sasol opposed the application. The Commission did not do so, and no relief is sought against it.

3. Having considered the papers and heard the submissions made by the parties, we set out our order and reasons for the decision below. We begin by outlining the factual background and the parties' respective submissions. We then address the application for interim relief, followed by Safripol's application, during argument, to amend the relief sought in its notice of motion.

Background

4. Safripol is the sole producer and marketer of polyethylene, in particular High-Density Polyethylene ("HDPE"), a group of plastic polymer materials, used as an input in the manufacture of a wide array of products across various industries, in South Africa.

5. Sasol is the sole producer and supplier of the monomer ethylene in South Africa. Ethylene is produced through Sasol's Fischer-Tropsch process C2-rich gas feedstock stream and is an essential input in the production of various types of plastic products.[1]

6. Sasol supplies ethylene to Safripol as an essential input in Safripol's HDPE production. It also utilises ethylene in its (Sasol's) downstream processes to produce Low-Density Polyethylene ("LDPE"), Linear Low-Density Polyethylene ("LLDPE"), polypropylene impact co-polymers ("ICPs") and Polyvinyl Chloride ("PVC").

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[1] It is produced through Sasol separating it from the ethane molecules in a separation unit. The ethane stream exiting the separation unit is subsequently fed into a cracker unit, where ethane molecules are broken down to produce additional ethylene.

7. On 8 December 1994, Safripol and Sasol ("the parties") concluded a written Ethylene Supply Agreement ("ESA"), effective from 26 June 1996, to regulate Sasol's supply of ethylene to Safripol.[2]

8. Under the ESA, Sasol would supply Safripol with up to 160 000 tons of ethylene per annum ("tpa") from the [redacted] tpa produced at Sasol's Secunda (Sasol Two and Sasol Three) and Sasolburg Cracker II (Sasol One) facilities (collectively referred to as the "1994 Plants").

9. Where the ethylene available from the 1994 Plants is insufficient to meet both parties' requirements, clause 6.3 of the ESA provided for the apportionment of the available quantity between the parties, pro rata to their respective actual offtake.

10. Following the ESA, the parties concluded various Heads of Agreement and Addenda modifying its terms, including-

    10.1. Addendum 10 to the ESA ("Addendum 10"), concluded on 4 January 2007, to modify the terms of clause 6.3 to read as follows:

    [redacted]

[2] Ethylene Supply Agreement, bundle p 168-198.

[redacted]…"[3]

10.2. Heads of Agreement ("2011 HoA"), concluded on 17 February 2011, regulating the supply of additional volumes to Safripol as follows:

[redacted]"[4]

10.3. 3rd Addendum to the 2011 Heads of Agreement ("3rd Addendum"), concluded on 17 September 2021, to set a formula for the price of ethylene payable by Safripol to Sasol, subject to pre-determined minimum and maximum levels, referred to as the cap and collar.[5]

11. It is common cause that Safripol draws ethylene directly from Sasol's pipeline. It is also common cause that Sasol currently supplies ethylene to Safripol at a price of R[redacted] per ton under the pricing formula determined in the 3rd Addendum.

12. On 1 November 2024, Sasol declared deemed hardship in respect of the pricing formula and subsequently declared a dispute.[6] That dispute is the subject of pending arbitration proceedings scheduled to be heard in March 2026.[7]

13. On 10 June 2025, Safripol requested an allotment of [redacted] tons of ethylene for each of the months July to September 2025.[8] In response, Sasol advised that

[3] Addendum number 10 to the Ethylene Supply Agreement, bundle p 356-358.
[4] Heads of Agreement, bundle p208 at para 4.6.
[5] Third Addendum to Heads of Agreement, bundle p361.
[6] Answering Affidavit, bundle p261 at para 54.
[7] Transcript p10, lines 9-11.
[8] Sasol's Rebuttal Affidavit, bundle p 600.

the ESA provided for a total ethylene supply of [redacted] tpa and a monthly average of [redacted] tons.[9]

14. According to Sasol, clause 6.3 of Addendum 10 entitles Safripol to 37.74% of ethylene from the 1994 Plants. The production from these plants had, over the past 3 years, decreased from [redacted] tpa to [redacted] tpa, with the result that Safripol is entitled to supply of [redacted] tpa (i.e., [redacted]% of [redacted] tpa).

15. Further, Sasol stated that for each of the months July to September 2025, Safripol would not receive volumes in excess of [redacted] tons (at R[redacted] per ton).[10] This notwithstanding, should Sasol have any additional, non-contractual volumes available, these would be offered to Safripol at a price of R[redacted] per ton commencing 1 July 2025.

16. In addition, should Safripol draw more than its entitled volumes (due to Sasol not offering additional volumes or Safripol exceeding the volumes offered), such conduct would render it liable for a penalty of R[redacted] per ton in excess of its entitlement and constitute a material breach and repudiation of the ESA, resulting in Sasol restricting Safripol's ability to freely draw volumes from the ethylene pipeline.

17. Aggrieved by Sasol's interpretation of the ESA, on 30 June 2025, Safripol lodged a complaint against Sasol with the Commission, requesting the Commission "*to determine whether Sasol's exclusionary conduct is in breach of the relevant*

[9] Founding Affidavit, bundle p 233 and Joint Statement of Common Cause Facts and Issues in Dispute, bundle p697 at para 32.
[10] Ethylene Quarterly Allotment, bundle p 604.

sections of the Competition Act",[11] and to refer the matter to the Tribunal pursuant to the provisions of section 50 of the Competition Act ("the Act").[12]

18. Thereafter, it approached the Tribunal for urgent interim relief, alleging *inter alia* that Sasol's conduct in reducing ethylene volumes and the terms on which additional volumes will be supplied constitute anti-competitive conduct, prohibited under sections 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(d)(ii), 8(1)(d)(vi) and/or 9 of the Act.

19. Subsequently, on 8 August 2025, Safripol declared a dispute in relation to Sasol's interpretation of the ESA.[13] At the time of the hearing, that dispute was the subject of mediation proceedings scheduled for November 2025.[14]

Parties' submissions

20. Safripol contends that Sasol's reduction of its ethylene supply from 160 000 tpa to [redacted] tpa and the unilateral increase in the price at which Sasol will supply additional volumes constitutes a material deviation from the 30-year long standing contractual relationship between the parties.

21. It argues that the reduction is significant and will impact the volumes of HDPE that it produces, which are intrinsically linked to the volumes of ethylene supplied by Sasol. According to Safripol, this will reduce its operating profits by approximately R[redacted] and generate negative returns for its shareholders on an investment of approximately R[redacted] in assets, thereby rendering it unsustainable as a business.

[11] Competition Commission Complaint, bundle p65-167.
[12] 89 of 1998, as amended.
[13] Notice of Dispute in terms of Clause 16 of the Ethylene Supply Agreement, bundle, p878.
[14] Transcript, p14, lines 10-13.

22. Safripol further submits that it supplies both domestic and export customers. It submits that if it is unable to meet the needs of its domestic customers, those customers may divert their business to imports, resulting in greater losses to its business, jeopardising the number of jobs it can sustain in the short to medium term and having an adverse knock-on effect on its other suppliers.

23. In addition, Safripol argues that the price of R[redacted] unilaterally imposed by Sasol for additional volumes, together with the pricing penalty, would further reduce Safripol's Earnings Before Interest and Tax ("EBIT") by approximately R[redacted]

24. In response, Sasol rejects the contention that it is deviating from the terms of the ESA and abusing its dominance. It maintains that it is merely complying with the ESA, which requires it to supply 37.74% of the ethylene produced from the 1994 Plants and that it will continue supplying Safripol in terms of the ESA.

25. Sasol argues that Safripol's cause of action falls outside the remit of the Act, as it concerns the interpretation of the ESA (an issue that is already the subject of contractual dispute resolution processes, including mediation and arbitration).

The relief sought by Safripol and case made by it in its founding affidavit

26. In its notice of motion, Safripol seeks an order against Sasol in the following terms:

> *"1. For a period of six months from the date of the order, or the conclusion of a hearing into any of the prohibited practices in terms of section 8(1)(a), 8(1)(b), section 8(c), section 8(1)(d)(ii), section 8(1)(d)(vi) and/or section 9 alleged by the applicant as detailed in the Form CC1 which is annexed to applicant's founding affidavit as "A", whichever is the earlier:*

1.1 The first respondent shall continue to supply ethylene to the applicant on the terms and conditions provided in the Ethylene Supply Agreement which is annexed to the applicant's founding affidavit as "B"; and

1.2 The applicant shall for the duration of the order adhere to the terms and conditions provided in the Ethylene Supply Agreement.

1.3 The first respondent is to pay the costs of the application, including the costs of two counsel, including senior counsel, on Scale C given the complexity and technical nature of this matter.

2. Further and/or alternative relief."[15]

27. The orders sought in paragraphs 1.1 and 1.2 of the notice of motion seek to compel Sasol's compliance with its obligations under the ESA. That begs the question of what those obligations are. Sasol contends that it is complying with the terms of the ESA. Safripol contends that Sasol has breached the ESA by misinterpreting its terms to enable it to limit Safripol's ethylene supply and unilaterally determining the terms on which any additional volumes will be supplied, notwithstanding:

27.1. a decision by the Competition Board on 4 October 1993, noting Sasol's contractual requirement to supply 160 000 tpa of ethylene on an ongoing and non-discriminatory basis;

27.2. the parties' compliance, over the past 30 years, with the requirement to supply and receive 160 000 tpa of ethylene; and

27.3. Sasol's consistent confirmation, in correspondence and public documents over the years, of its obligation to supply 160 000 tpa to Safripol.

[15] Notice of Motion, bundle p1-4.

28. In essence, the conduct complained of in Safripol's papers concerns Sasol's interpretation of the ESA, as amended. The founding affidavit contains a detailed analysis of the relevant provisions of the ESA, and of the conduct of Sasol in this regard.[16] It concludes by asserting that Sasol's conduct amounted to *"not only a repudiation and breach of the supply agreement, but also a clear breach of the Competition Act."*[17]

29. Thereafter, under the heading *"Sasol's Contravention of the Competition Act"*, Safripol submitted that Sasol's conduct was unjustified and strategically motivated, rather than to serve a legitimate operational objective.[18] It contended that any harm to competition would be permanent and irreversible.[19] It would not be unfair to characterise this part of the founding affidavit as somewhat cursory. Allegations are made which are mainly conclusory in their nature, rather than allegations of fact which would constitute evidence.

30. More specifically, the founding affidavit did not provide any factual basis on which the Tribunal could reach conclusions as to (for example) the critical questions of volume and price. These were not addressed in a manner which would enable the Tribunal to determine what interim relief should be granted with regard to those matters.

31. During argument, counsel for Safripol accepted, correctly, that it was not for the Tribunal to determine the correct interpretation of the ESA, and whether Sasol

[16] Founding Affidavit, supra at paras 61-95.
[17] Ibid at para 96.
[18] Ibid, p37.
[19] Ibid at paras 97-104.

was in breach of that agreement. Those questions were pending before a mediator, and did not fall within the jurisdiction of the Tribunal.

32. Counsel for Safripol further agreed, correctly, that the question of the proper interpretation of the ESA, and whether Sasol had breached the ESA, was irrelevant to the issues before the Tribunal.[20]

33. Counsel contended that the relevant conduct for purposes of these proceedings is Sasol's imposition of different terms for the supply of additional volumes and its threats to restrict ethylene supply and terminate the ESA.[21] Counsel further contended that the submissions in Safripol's papers regarding the proper interpretation of the ESA were advanced only to demonstrate that Sasol lacks justification for its alleged abusive conduct.[22] However, it contends that Safripol was not required to plead its case on this basis.[23]

34. During the submissions by counsel for Safripol, the following exchange took place:

"<u>Chairperson</u>: I am asking whether you have pleaded that even if we are wrong in our interpretation of the contract, there is prohibited conduct. There is abuse of dominance under the Competition Act, and the contract is therefore invalid.

<u>Ms Le Roux</u>: So, we have not.

<u>Chairperson</u>: Have you pleaded that anywhere?

<u>Ms Le Roux</u>: Chair, we have not pleaded that allegation because with respect, we do not need to. The conduct of Sasol is what gives rise to the complaint. It is refusal to supply

[20] Transcript p30, lines 14-19.
[21] Ibid, p32, lines 5-6.
[22] Ibid, line 21.
[23] Ibid, p 29, lines 6 -15.

above [redacted] tonnes. The contract is its justification for doing that. The competition contravention is telling me no volume above [redacted] and no volume unless you pay me a [redacted] percent premium. It is that conduct that the Act catches … But their conduct is what the Act looks at, not the contract. So yes, I must admit, we have not pleaded an allegation that says even if the contractual interpretation is correct, there is still a competition case."[24]

35. Counsel for Safripol proposed during argument that Safripol should prepare a draft order "*with the conduct that we want to stop or that we want to have for a six-month period. We want this volume at this price, or at this price reforming [formula].*"[25]

36. At the end of counsel's address, the hearing was stood down for a short period to enable counsel for Safripol to formulate and make available to the Tribunal and counsel for Sasol, the amended relief which it wished to introduce.

37. The application for amendment was made shortly before counsel for Sasol commenced his oral submissions. Safripol sought the deletion of paragraphs 1.1, 1.2, 1.3 and 2 of the notice of motion (in their entirety), and their replacement with the following orders:

"1.1 The first respondent shall continue to supply ethylene to the applicant as on the following basis -

1.1.1 [redacted] tons for November 2025 to April 2026, such volume to be allotted on a quarterly basis of between [redacted] to [redacted] tons per quarter;

1.1.2 The October 2025 allotment will be supplied at ZAR [redacted] per ton;

[24] Ibid, p29 line 6 to p30 line 4.
[25] Ibid, p41, lines 18-21.

1.1.3 *The November 2025 to December 2025 allotments will be supplied at a price determined using the following price mechanism -*

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted],

1.1.4 [redacted]

1.1.5 [redacted]

[redacted]

1.1.6 [redacted]

2. *The first respondent shall pay the costs of this application, including the costs of two counsel, including senior counsel, on Scale C."*[26]

38. Counsel for Sasol objected to this proposed amendment. He contended that Safripol should not be permitted to amend its notice of motion in this manner. However, without conceding the permissibility of the amendment, he then addressed the merits of the proposed relief. He submitted that in any event it could not be granted.

39. The Tribunal reserved its decision on whether the amendment would be permitted and granted leave for the filing of written submissions after the hearing, dealing with the permissibility of the proposed amendment.[27]

Requirements for interim relief

40. The requirements for interim relief are trite. Section 49C(2)(b) of the Act confers a discretion on the Tribunal to grant interim relief if it is just and reasonable to do

[26] Draft Order.
[27] Transcript p107, lines 14-21 to p108, lines 1-14.

so, having regard to three factors, namely: (i) the evidence relating to the alleged prohibited practice; (ii) the need to prevent serious or irreparable damage to the applicant; and (iii) the balance of convenience.

41. These factors must be understood holistically to determine whether a case for interim relief has been established.[28] In other words, the Tribunal must assess whether there are clear, non-speculative and uncontroversial facts supporting the granting of interim relief, bearing in mind that it is not required to make a definitive finding of a contravention at this stage. The applicant need only establish a *prima facie* case, not prove its case on a balance of probabilities.[29]

42. The well-established test in *Webster v Mitchell,*[30] (which has been endorsed by the Tribunal in *York Timbers*[31]), provides guidance on whether an applicant has established a *prima facie* case. It entails taking the facts set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant, it cannot succeed in obtaining interim relief.

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[28] *Nedschroef Johannesburg (Pty) Ltd v Teamcor Limited and Others* (95/IR/Oct05) [2006] ZACT 7; [2006] 1 CPLR 98 (CT) (1 February 2006) at paras 23-25.

[29] *eMedia Investments (Pty) Ltd v Multichoice (Pty) Ltd and another* (201/CAC/JUN22) (1 August 2022) at paras 80-81 and 93.

[30] *Webster v Mitchell 1948 (1) SA 1186 (W) at 1189 as qualified in Gool v Minister of Justice and Another* 1955 (2) SA 682 (C) at 688E and approved in *Simon N.O. v Air Operations of Europe* [1998] ZASCA 79; 1999 (1) SA 217 (SCA) at 228G-H.

[31] *York Timbers Ltd v South African Forestry Company* (15/IR/Feb01) at paras 64-66.

Relevant markets and dominance

43. To succeed in the prohibited practices alleged under sections 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(d)(ii), 8(1)(d)(vi) and/or 9 of the Act, Safripol must identify the relevant markets, with reference to the markets in which the alleged abuse of dominance is said to occur[32] and establish Sasol's dominance in those markets.[33]

44. It is common cause that there exists an upstream market for the supply of ethylene in South Africa and that Sasol, as the sole producer of ethylene, is dominant in that market. It is also common cause that the parties compete downstream in the production of polypropylene co-polymers.[34]

45. The dispute concerns four downstream markets in which Safripol alleges that it competes with Sasol, namely:

    45.1. the production and supply of polypropylene homopolymer products;

    45.2. the production of HDPE by Safripol and LLDPE by Sasol, which Safripol alleges compete in certain applications, including water tanks;

    45.3. Sasol's alleged potential entry into HDPE production, which would place it in direct competition with Safripol; and

    45.4. the procurement of scarce ethylene.

[32] *Mlonzi and Another v Eskom Holdings Soc Limited and Another* (IR1360CT22) [2023] ZACT 61, para 35.
[33] In terms of section 7, "*A firm is dominant in a market if (a) it has at least 45% of that market; (b) it has at least 35%, but less than 45%, of that market, unless it can show that it does not have market power; or (c) it has less than 35% of that market but has market power*". "*Market power*" is defined in section 1(1) as "*the power of a firm to control prices, to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers*".
[34] Answering Affidavit, bundle p265 at para 73.

The production and supply of polypropylene homopolymer

46. It is common cause that while Safripol and Sasol compete in the production and supply of polypropylene homopolymer, ethylene is not an input in the production of these products.[35]

47. Safripol argued that this market is relevant because harm to those parts of its business that rely on ethylene is likely to undermine its ability to compete effectively in the production and supply of polypropylene homopolymer.

48. As we have explained above, the relevant market must be defined with reference to the market in which the alleged abuse is said to occur. Safripol's case and its theories of harm engage Sasol's activities as a producer and supplier of ethylene. Polypropylene homopolymer products are derived solely from propylene monomer, not ethylene.[36] Accordingly, we find that Safripol has failed to establish, on a *prima facie* basis, the relevance of polypropylene homopolymer to Sasol's alleged conduct, in these proceedings.

Alleged competition between LLDPE and HDPE

49. In its founding affidavit, Safripol alleged that HDPE and LLDPE compete directly in certain applications, including the production of water tanks.[37] It alleged that as such, Sasol poses a potential future competitive threat in respect of HDPE.[38] In reply, Safripol reframed the relevant market as *"…the end-market for water-*

[35] Founding Affidavit, bundle p25 at para 58.5.
[36] Answering Affidavit, supra at para 146.
[37] Founding Affidavit, bundle p25 at para 58.2.
[38] Ibid at para 58.3.

tanks", contending that from the perspective of the customer, an HDPE water tank competes directly with an LLDPE water tank.[39]

50. The evidence indicates agreement between the parties' economic experts that, although HDPE and LLDPE may compete in certain applications, they generally constitute distinct product markets.[40] Safripol had identified the production of water tanks as a key area of overlap.

51. Sasol argued that while water tanks can be manufactured using HDPE or LLDPE, their production entails different manufacturing processes and their inputs are not substitutable. It contended that HDPE is used in blow moulding processes to produce water tanks, whereas LLDPE is used in rotational moulding processes, as such, that producers cannot readily switch between the two because production facilities are designed for one or the other.[41] Safripol did not seriously dispute these claims.

52. In conclusion, we are not satisfied that Safripol has established, on a *prima facie* basis, that HDPE and LLDPE compete, specifically in the production of water tanks. While the finished tanks may perform the same function from the perspective of the end customer and there may be overlap at that level, the alleged market is not the downstream market for water tanks, in which neither party is active but rather the inputs produced by the parties and supplied to water tank producers. The *prima facie* evidence before us indicates that these inputs are not substitutable.

[39] Replying Affidavit, supra at para 133.10.4.
[40] RBB Report, bundle p517at para 68. Replying Affidavit, bundle p524.
[41] Ibid at para 141.

53. This does not suggest that the inputs do not compete in all applications, as noted by the experts. However, it would not be appropriate to make a general finding of competition where Safripol relied specifically on the production of water tanks and has placed no evidence before us identifying other applications in which the alleged competition exists.

Alleged potential competition in HDPE

54. Safripol contended that Sasol's production of LLDPE renders it a potential producer of HDPE and that it would be feasible and inexpensive for Sasol to convert its LLDPE facilities to produce HDPE as both products utilise low pressure reactors and similar catalysts.[42]

55. Sasol argued that its existing facilities are not suitable for HDPE production and that there would be no economic rationale for the conversion. This is because converting its facilities would require downtime and loss of production in its operations. Sasol further submitted that it has no experience in producing HDPE and would require time to build market share. It also submitted that HDPE production relies on non-gas phase technology, whereas LLDPE production is gas phase based, with onsite catalyst production at a low cost and a conversion would require Sasol to source HDPE catalysts from third parties.

56. Neither Safripol nor its expert provided objective evidence to rebut Sasol's position. We are accordingly not persuaded, on a *prima facie* basis, that Sasol is a potential competitor, capable of constraining Safripol in the production of HDPE.

[42] Replying Affidavit, supra at para133.13.3.

Alleged competition in the procurement of scarce ethylene

57. Safripol argued that the parties compete directly in procuring ethylene and that given the structural shortage of ethylene in South Africa, a separate procurement market for ethylene should be defined.

58. Sasol denied the alleged competition. It explained that it does not purchase ethylene from itself but rather allocates it internally and only sells ethylene externally, to Safripol. It contended that it cannot, as a dominant producer, sell ethylene to Safripol and then compete with Safripol in the procurement of that ethylene.

59. Sasol further argued that an exercise of market power in a procurement market ordinarily involves a buyer exercising power *qua buyer* to extract benefits from a third party seller, either to the detriment of that seller or other buyers. However, that it is not a buyer of ethylene and that there is no third party seller over whom it can exert such power.

60. Safripol argued that having a single independent buyer gives Sasol both the ability and incentive to restrict its access to supply. Relying on the decision in *WeBuyCars*[43], it rejected Sasol's contention that a procurement market can only be defined under monopsony power, contending instead that such a market can be defined whenever buyers compete for access to limited inputs. According to Safripol, the concern in such cases arises where a vertically integrated firm is

[43] *WeBuyCars* (Case no. LM183Sep18).

able to use its control over supply to foreclose rivals, raise their costs, or distort downstream competition.

61. Even assuming, without deciding, that a procurement market may be defined outside monopsony power (which it is not appropriate or necessary for us to decide in this application), Safripol's theory of harm has the characteristics of a vertical foreclosure case. However, it does not address how Sasol, as a downstream buyer, could deprive downstream rivals of supply. Central to this difficulty is that Safripol does not compete with Sasol for the procurement of ethylene, as noted by Sasol. Harm to Safripol's competitive position would therefore have to flow vertically from Sasol's position as a monopolist, rather than from any alleged buyer power.

62. In addition, there is no evidence to suggest that Sasol is able to deprive Safripol of ethylene supply. On the contrary, the undisputed evidence indicates that allocation to Safripol (in terms of volume, price and the terms of additional supply) is determined by the ESA, whereas supply to Sasol's downstream plants is determined by internal business plans, costs and market prices of ethylene derivative products. Such that if a downstream plant does not generate sufficient returns at prices competitive with import prices, Sasol adjusts its annual planning to redirect ethylene to plants delivering better returns.[44]

63. For the above reasons, we are not satisfied that Safripol has established on a *prima facie* basis that it competes with Sasol for the procurement of ethylene.

[44] Answering Affidavit, supra at paras 32-33.

Conclusion on the relevant markets

64. For all the above reasons, we conclude that the relevant markets are the upstream market for the production and supply of ethylene and the downstream market for the production of polypropylene co-polymers in South Africa.

Prohibited practices[45]

Sections 8(1)(c) & 8(1)(d)(ii) & (vi): Exclusionary acts

65. As we have set out above, Safripol is Sasol's customer in the supply of ethylene and competes with Sasol for the production of polypropylene co-polymers.

66. Section 8(1) states, in material part, that it is prohibited for a dominant firm to:

> *"(c) engage in an exclusionary act, other than an act listed in paragraph (d), if the anti-competitive effect of that act outweighs its technological, efficiency or other pro-competitive gain; or*
>
> *(d) engage in any of the following exclusionary acts, unless the firm concerned can show technological, efficiency or other pro-competitive gains which outweigh the anti-competitive effect of its act—*
>
> *(ii) refusing to supply scarce goods or services to a competitor or customer when supplying those goods or services is economically feasible;*
>
> *(vi) engaging in a margin squeeze."*

67. Section 1 defines an "*exclusionary act*" as "*an act that impedes or prevents a firm from entering into, participating in or expanding within a market*." The term "*participate*" is in turn defined as "*the ability of or opportunity for firms to sustain themselves in the market*."

[45] While Safripol persisted with all the prohibited practices, its case is focused on the alleged prohibited practices under sections 8(1)(c) and 8(1)(d)(ii). Safripol's heads of argument, p53 at para 136.

68. In *Computicket,* the CAC explained that, when dealing with prohibited practices, it is necessary first to establish whether the conduct in question is exclusionary in nature. Where the alleged prohibited conduct falls under section 8(1)(c), it must be assessed in line with the general definition of an exclusionary act above. Conversely, where the conduct falls under section 8(1)(d), it is not assessed against the general definition, but against the specific requirements set out in the relevant subsection. If those requirements are met, the conduct constitutes an exclusionary act.[46]

Refusal to supply

69. The parties agreed that ethylene is a scarce good.[47] The dispute concerns whether Sasol's conduct amounts to a refusal to supply, and whether it is economically feasible for Sasol to supply Safripol on the terms sought by Safripol.

70. Safripol argued that Sasol engaged in a refusal to supply by reducing its ethylene supply and increasing the price of ethylene notwithstanding that both had been contractually agreed. In addition, Safripol contended that Sasol's conduct of threatening to terminate the ESA and to cut off Safripol's access to the pipeline also constituted a refusal.

71. Sasol denied the refusal to supply. It contended that Safripol has continued access to the pipeline and is drawing ethylene volumes in excess of its 37.74% entitlement under the ESA.[48] Sasol further submitted that it has not refused to

[46] *Computicket (Pty) Ltd v Competition Commission of South Africa* 170/CAC/Feb 19 at para 16.
[47] Sasol heads of argument, p49 at para 120.
[48] Answering Affidavit, supra, p266 at para 75.

supply additional volumes, but that such volumes would not be supplied at the contractual price, in respect of which it has declared deemed hardship, but rather at a price reflective of its costs.[49]

72. Safripol rejected the contention that its continued access to the pipeline does not amount to a refusal.[50] It argued, correctly, that a refusal to supply is not limited to an outright denial of supply but may be established through conduct, including the unilateral imposition of higher prices and threats to terminate the ESA in the event of non-compliance with Sasol's unilateral terms.[51]

73. Despite this, Safripol cannot overcome the difficulty presented by the case it formulated in its founding papers, on the basis of which Sasol's conduct must be assessed. As explained above, Safripol's notice of motion seeks to compel compliance with the ESA. The parties have adopted conflicting interpretations of the ESA and have conducted themselves according to their respective interpretations. On Sasol's interpretation, Safripol is entitled to supply of [redacted] tpa, and any departure from its interpretation would trigger the breach and dispute resolution mechanisms provided in the ESA. In our view, Sasol's threats to terminate the ESA and to cut access to the pipeline must be understood in the context of the contractual dispute as opposed to a refusal to supply under the Act.

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[49] Ibid at para 76.
[50] Transcript, p68, lines 2-5.
[51] Safripol's heads of argument, p704-05 at paras 12 & 13.5. It is trite that the concept of a refusal to supply may include a constructive refusal, such as where supply is offered subject to unreasonable terms (see *Competition Commission v Telkom SA Ltd* (Case No. 11/CR/Feb04, dated 7 August 2012) [2012] 2 CPLR 334 (CT)). Moreover, in *Business Connexion (Pty) Ltd v Vexall (Pty) Ltd and Another* (*182/CAC/Mar20) [2020] ZACAC 4; [2020] 2 CPLR 490 (CAC*) *("BXC")* at para 31, the CAC explained, albeit with reference to the nature of interim orders, that such orders require *"that a prohibited practice, existing or threatened, ceases or is in some measure materially altered*".

74. Even if we are wrong in the above, we are in any event not persuaded that Safripol has demonstrated an entitlement to 160 000 tpa. Safripol contended that over the past ten financial years, Sasol supplied ethylene in quantities averaging up to [redacted] tpa.[52] Sasol disputed this, submitting that over the past five financial years Safripol's offtake averaged [redacted] tpa and that the volumes supplied in the 2023 and 2024 financial years were [redacted] tpa and [redacted] tpa respectively.[53]

75. Safripol did not dispute these reduced quantities but attributed them to *force majeure* events experienced by Sasol, as well as the shutdown of its HDPE operations for maintenance. Sasol denied any *force majeure* events occurred. No evidence was placed before us to establish that the reduced supply resulted from such events. In our view, this casts serious doubt on Safripol's case regarding its asserted ethylene requirements. Absent a factual basis on which we can determine Safripol's requirements, we find that Safripol has not established, on a *prima facie* basis, that Sasol engaged in a refusal to supply.

Economic feasibility

76. Section 8(1)(d)(ii) does not require a firm to supply scarce goods or services if it is not economically feasible to do so. Accordingly, where supplying the goods or services would impede the firm's ability to compete efficiently, a refusal to supply will not contravene section 8(1)(d)(ii).

77. Sasol submitted that it is not economically feasible to supply Safripol 160 000 tpa where Safripol is contractually entitled to [redacted] tpa at a price of R[redacted] per

[52] Founding Affidavit, supra at para 93.
[53] Ibid at paras 76 and 107.

ton.[54] Sasol argued that its total cost of supply is R[redacted] per ton and that even if depreciation and capital costs are excluded, its production costs remain above R[redacted] at R[redacted] per ton. Sasol further submitted that supplying the disputed volumes to its downstream LLDPE plants would generate margins of up to R[redacted] per ton, further illustrating the economic infeasibility of supplying those volumes at R[redacted] [redacted].[55]

78. Sasol also submitted that ethylene production volumes have steadily declined due to reduced output at its upstream synfuels plants, resulting in lower volumes of all downstream products produced at its Secunda facility, including ethylene.

79. Safripol argued that it is economically feasible for Sasol to supply 160 000 tpa in terms of the ESA, as Sasol has allegedly done over the past 30 years. It contends that Sasol's costs and assertions regarding reduced ethylene production are irrelevant to Sasol's contractual obligation to supply 160 000 tpa.[56]

80. Safripol's expert criticised Sasol's allocation of common costs, particularly the use of a volume-based allocation, which resulted in a cost estimate of R[redacted] per ton. The expert argued that allocating common costs on a volume basis is arbitrary and that revenue could serve as another basis.[57] It was further suggested that Sasol's cost information lacks objective grounding in economic reality. Safripol's expert also argued that ignoring Fischer Tropsch ("FT") costs

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[54] Ibid at para 76.
[55] Genesis Report, bundle p331-33.
[56] Replying Affidavit, supra at paras 125.3 and 133.6.3.
[57] RBB Report, bundle p522-24 at para 86.

would result in reduced ethylene costs, as ethylene is a by-product of the FT process and would be produced irrespective of downstream usage.[58]

81. Sasol responded that its costs are obtained from its reliable accounts and cost data. Further, Sasol explained that common FT costs are allocated on a volume basis, such that a product accounting for [redacted]% of FT output is allocated [redacted]% of FT costs. Sasol further argued that the use of revenue to allocate costs is inappropriate given *inter alia* that, the same physical costs are incurred irrespective of the selling price of downstream products, and that revenue-based allocation would perversely increase allocated costs as prices increase.[59]

82. In addition, Sasol disputed that ethylene is a by-product. It submitted that approximately [redacted]% of FT output is used to produce ethylene. Sasol contended that treating ethylene as a by-product would prevent its recovery of legitimate upstream and shared costs, leading to its exit.

83. Sasol's expert rejected the contention that Sasol's common costs can be covered by increasing the prices of other products, noting that this would require other downstream customers to subsidise the production of ethylene supplied to Safripol.

84. We are not persuaded that Sasol's cost estimates are unreliable or that the supply of additional volumes at R[redacted] is economically feasible. Further, in the absence of persuasive evidence, we cannot find that Safripol's suggested cost

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[58] Ibid at paras 100-02.
[59] Genesis Report, bundle p567-68 at para 38.

allocation methodologies, including the allocation of common costs, would render supply at R[redacted] economically feasible, particularly given that the price is the subject of Sasol's deemed hardship. Accordingly, Safripol has not established, on a *prima facie* basis, that Sasol can supply the disputed volumes without impairing its ability to operate efficiently.

Margin squeeze

85. A margin squeeze occurs where *"a vertically integrated firm, which is dominant in an input market, sells a downstream product, and the price at which it sells the key input to competitors, is too small to allow downstream competitors to participate effectively".*[60]

86. It is common cause that the parties compete in the market for the production of polypropylene co-polymers.

87. Safripol contended that Sasol has engaged in margin squeeze by reducing the volumes of ethylene supplied to Safripol, and increasing the price of volumes supplied in excess of the reduced threshold, with the result that the margins available to Safripol, as Sasol's only downstream competitor, are significantly reduced relative to the margins enjoyed by Sasol's own downstream business units.[61]

88. Sasol submitted that its position as an upstream supplier of ethylene does not provide it with sufficient leverage to subject Safripol to a margin squeeze. It

[60] Section 1 of the Act.
[61] Founding Affidavit, supra p38 at para 99.2.

argued that Safripol only requires [redacted] tpa to produce polypropylene co-polymers, and that this requirement is fully met by the undisputed supply of [redacted] tpa.[62]

89. While Safripol contended that the volumes of ethylene it utilises in the production of polypropylene co-polymers are irrelevant, it has placed no evidence before us to rebut Sasol's submission that its ethylene needs are fully met within the undisputed contractual volumes.

90. In these circumstances, Safripol has failed to establish, on a *prima facie* basis, that Sasol's conduct results in a margin squeeze. Accordingly, this ground cannot succeed.

91. Our assessment above, while done in the context of section 8(1)(d)(ii) and (iv), is also relevant for purposes of section 8(1)(c). Further, having found that Sasol has not engaged in an exclusionary act, we do not proceed with the assessment of anti-competitive effects.

S 8(1)(b): Essential facility

92. Section 8(1)(b) prohibits a dominant firm from refusing to give a competitor access to an essential facility where it is economically feasible to do so.

93. Section 8(1)(b) differs materially from section 8(1)(d)(ii) in that the former concerns access to an "*essential facility*",[63] while the latter relates to the supply

[62] Genesis Report, p334. Sasol heads of argument at para 138.
[63] The Act defines an ***"essential facility"*** as a *"resource or infrastructure that cannot reasonably be duplicated and without access to which competitors cannot reasonably provide goods or services to their customers".*

of a "*scarce good*".[64] In addition, section 8(1)(b) constitutes a *per se* prohibition, whereas section 8(1)(ii) requires the establishment of an anti-competitive effect.

94. Notwithstanding these differences, the assessment of whether there has been a refusal to supply and whether such supply is economically feasible is common to both provisions. Accordingly, our findings under section 8(1)(d)(ii) in relation to refusal to supply and economic feasibility apply equally to Safripol's claim under section 8(1)(b).

95. In light of these findings, it is not necessary for us to determine whether ethylene constitutes an essential facility as defined in the Act.

S 8(1)(a): Excessive pricing

96. Safripol's complaint under section 8(1)(a) concerns the R[redacted] which Sasol intends to charge for the volumes supplied in excess of the reduced contractual volumes (including the penalty component). Safripol contends that this price is excessive and will significantly reduce its margins.[65]

97. Section 8(1)(a) prohibits a dominant firm from charging an excessive price to the detriment of consumers or customers. In terms of section 8(2), Safripol bears the onus of establishing, on a *prima facie* basis, that Sasol has abused its dominance by charging an excessive price. Once such a case is made out, the onus shifts to Sasol to demonstrate that the price is reasonable.

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[64] In *GovChat (Pty) Ltd and another v Facebook Inc. and others (Case No. IR165Nov20),* 11 March 2021, para 113, the Tribunal found that the technology app at issue in that matter "*cannot be easily duplicated without significant capital investment and therefore can be considered as 'scarce' or hard to come by*".
[65] Founding Affidavit, supra at para 99.4.

98. Section 8(3) of the Act provides that a person determining whether a price is an excessive price must determine if that price is higher than a competitive price and whether such difference is reasonable, determined by taking into account all relevant factors, which may include the respondent's prices for the goods or services historically, the length of time the prices have been charged at that level, the structural characteristics of the relevant market, including the extent of the respondent's market share, the degree of contestability of the market, barriers to entry, and past or current advantage that is not due to the respondent's own commercial efficiency or investment, such as direct or indirect state support for a firm or firms in the market.

99. Sasol submitted that it continues to supply Safripol with [redacted] tpa in accordance with the ESA's pricing formula, subject to the cap and collar. This results in a price of R[redacted] per ton, and it is in respect of this price that Sasol declared deemed hardship.

100. As regards additional volumes, Sasol contended that the R[redacted] per ton is derived from the formula set out in the ESA (i.e., [redacted]).[66] Sasol submitted that this price is higher

[66] Where:
[redacted]

than the contracted price only because it excludes the cap and collar, which, it argues is not determined with reference to the value of ethylene.[67]

101. Safripol asserted that the R[redacted] price is excessive because it is higher than any reasonable estimate of a competitive price.[68] However, Safripol has placed no factual or economic evidence before us identifying a competitive price or providing benchmarks against which the reasonableness of Sasol's price can be assessed.

102. Moreover, in the absence of a determination of the proper interpretation of the ESA, it is unclear on what basis Safripol challenges the reasonableness of the [redacted]. While Safripol argues that Sasol does not dispute the pricing formula set out in the ESA, it is common cause that Sasol has declared deemed hardship in respect of that pricing formula.

103. For these reasons, we conclude that Safripol has failed to establish a *prima facie* case for excessive pricing under section 8(1)(a).

S 9: Price discrimination

104. Section 9 of the Act prohibits a dominant firm from engaging in price discrimination by charging a different price to customers in respect of equivalent sales for products or services, where such differentiated pricing results in anti-competitive effects.

[67] Sasol heads of argument, p44 at para 103.1.
[68] Safripol heads of argument, p81 at para 207.

105. Safripol contended that Sasol has engaged in anti-competitive price discrimination by applying different volume and pricing terms to Safripol, compared to the more favourable terms allegedly applied to Sasol's own internal downstream business unit.[69] Safripol further submitted that Sasol has no objective basis for distinguishing between volumes of ethylene supplied up to [redacted] tpa and volumes supplied in excess of that.[70]

106. Sasol contended that Safripol is its only third-party customer for ethylene. It contended further, that the volumes to be supplied and the price payable by Safripol are governed by the ESA. According to Sasol, the price payable by Safripol is determined in accordance with the contractual pricing mechanism, rendering the dispute one of contractual interpretation rather than anti-competitive price discrimination.

107. At the hearing, counsel for Safripol conceded that Safripol has no evidence of the price at which Sasol supplies ethylene to its downstream business. Counsel nevertheless submitted that, on a *prima facie* basis, discriminatory conduct appears to be present.[71]

108. In our view, Safripol has failed to place clear and non-speculative facts before us in support of its case under section 9. In the absence of evidence establishing differential pricing in respect of equivalent sales, and resulting anti-competitive effects, Safripol has not established, on a *prima facie* basis, that Sasol engaged in price discrimination.

[69] Founding Affidavit, supra at para 98.3.
[70] Transcript p62, lines 11-19.
[71] Ibid, p62, lines 2-19.

Conclusion on prohibited conduct

109. In conclusion, we find that Safripol has failed to establish a *prima facie* case of prohibited conduct against Sasol.

110. The Tribunal has previously stated that it would be reluctant to grant interim relief where a prohibited practice has not been established on a *prima facie* basis.[72] In any event, and having regard to the conclusions reached above, we are not persuaded that the refusal of interim relief in this matter will result in serious or irreparable harm to Safripol's competitive position, nor that the balance of convenience favours the grant of interim relief.

Application to amend

111. Safripol's application for amendment of its notice of application needs to be considered in the light of the factual background, and legal principles which are well-established.

112. It is well established that an amendment (including to the notice of motion) will generally be permitted unless it is *mala fide*, or unless it occasions prejudice to the other party that cannot be cured by an appropriate costs order, or unless the parties cannot be restored, for purposes of justice, to the position they occupied

[72] *See Replication Technology Group (Pty) Ltd v Gallo Africa Ltd* (Case No. 92/OR/Sep07) at para 29.

when the pleading sought to be amended was filed. The overriding consideration in each case is what the interests of justice require.[73]

113. In *Commercial Union Assurance* the following principles were articulated:[74] (i) the court has discretion whether to grant or refuse an amendment; (ii) an amendment is not merely for the asking and must be supported by an explanation; (iii) the applicant must show *prima facie* that the amendment raises a triable issue; (iv) the modern tendency lies in favour of an amendment if such facilitates the proper ventilation of the disputes between the parties; (v) the amendment must not be *mala fide*; (vi) the amendment must not cause an injustice which cannot be compensated by costs; (vii) the amendment should not be refused simply to punish the applicant for neglect; (viii) a mere loss of the opportunity of gaining time is no reason, in itself, for refusing the application; and (ix) if the amendment is not sought timeously, some reason must be given for the delay.

114. In essence, the relief sought in the draft order is for: (i) the supply of [redacted] tons of ethylene for the period November 2025 to April 2026; (ii) the supply of ethylene to Safripol in October 2025 at a specified price per ton; and (iii) an order that the price of ethylene supplied from November 2025 to April 2026 be determined in accordance with the ESA's defined pricing formula.

115. Safripol contends that the proposed relief would maintain the status *quo ante*, being the position prior to 1 July 2025, for a period of six months, thereby enabling

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[73] *Affordable Medicines Trust and Others v Minister of Health and Another* (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005) at para 9. *Alba Gas (Pty) Ltd v Air Products South Africa (*CRP221Feb17) at para 3.
[74] *Commercial Union Assurance Co Ltd v Waymark NO* 1995 (2) SA 73 (TK) at 76D-76I.

it to maintain its competitive position in the market.[75] Further, that each prayer in the draft order is supported by the facts and the analysis contained in the affidavits before us. In this respect, Safripol relies on:

115.1. the contention that the volume sought (i.e., [redacted] tons) represents a portion of its alleged entitlement under the ESA;

115.2. a letter addressed by Sasol to Safripol on 27 October 2025 and provided to the Tribunal after the hearing, in which Sasol allegedly undertook to supply October volumes at a price calculated under the pricing formula contained in the ESA; and

115.3. the contention that the pricing formula proposed for the period November 2025 to April 2026 reflects the prevailing pricing mechanism contained in the ESA.[76]

116. Counsel for Sasol submitted that in truth, what Safripol was seeking in its proposed amendment was contractual relief. It is difficult to find fault with this submission.

117. As we have noted above, the proper interpretation of the Agreement is not a matter which is before the Tribunal for decision in this interim relief application, and it will also not be a matter for determination by the Tribunal on a referral of the complaint to it.

[75] Safripol's Further Submissions Regarding Draft Order and Sasol's Objection, p28 at para 67.
[76] Ibid at para 68.

118. Despite this, Safripol has throughout the proceedings, oscillated between two materially different positions: on the one hand, that the interpretation of the ESA is irrelevant and that the matter should be assessed solely on the basis of Sasol's conduct; and on the other, that the relief sought is grounded squarely in the terms of the ESA, notwithstanding the existence of a contractual dispute. The draft order entrenches, rather than resolves this lack of clarity in Safripol's case.

119. This difficulty is illustrated by Safripol's reliance on maintaining the *status quo ante*. Safripol contends that the *status quo* prior to 1 July 2025 entitled it to supply by Sasol of 160 000 tpa and that the [redacted] tons sought in the draft order merely reflects that position over a six-month period. However, the existence and content of this alleged *status quo* are disputed. Sasol maintained that, for a number of preceding financial years, it did not supply Safripol with 160 000 tpa.

120. Moreover, Safripol's own case, as pleaded, does not require supply at [redacted] tons, and no clear basis is advanced in the affidavits for the reduced quantities reflected in the draft order. The case advanced in the proposed amendment is therefore not the case that Sasol was called upon to meet.

121. Safripol further relied, in support of the relief sought in its amended prayer 1.1.2 in respect of October 2025 pricing, on a letter from Sasol dated 27 October 2025.[77] In this letter, Sasol purportedly informed Safripol that it had allocated [redacted] tons of ethylene at a price of R[redacted] per ton for October 2025. However, no

[77] Ibid, p29 at para 68.2.

evidence was presented in the founding papers to explain why Sasol needed to supply ethylene at this price in order to avoid a breach of the Competition Act.

122. Moreover, Safripol only sought confirmation of the price component and not of the volumes at which Sasol would supply at that price. This, in truth, indicates that the stated price reflects the rate at which Sasol would need to supply ethylene in order to comply with Safripol's interpretation of the ESA.

123. In addition, this letter was not before us at the time of the hearing. Its contents and the circumstances in which it was authored have not been confirmed on oath by Safripol, nor have they been answered by Sasol. In the circumstances, it would be inappropriate to grant relief founded on this letter.[78]

124. In relation to pricing for the period November 2025 to April 2026, Safripol contends that the proposed pricing formula accords with that contained in the ESA. But as we have noted above, the founding affidavit does not set out any factual evidence which demonstrates a breach of the Act on the basis that the price above a certain level or supply below a certain level will result in an abuse. In that sense, it is correct that Safripol did not in its founding affidavit (which must contain both submissions on the law and the evidence on which it relies in order to justify those submissions) plead the facts on which a conclusion could be reached that there was a breach of the Act and as to what levels of price and volume would be permissible under the Act.

[78] In *PPC Limited & Others v Temblor Trading (Pty) Ltd t/a EST Building & Hardware*, Case no.: 267/CAC/Jan25 and 268/CAC/Feb25 at paras 13, 14 and 66, the *CAC* cautioned against relying on post-hearing submissions that are disputed and not placed before the Tribunal on affidavit, finding that such reliance may undermine a party's right to a fair hearing.

125. Counsel for Sasol pointed out that Sasol has never had the case put to it that volumes and prices at certain levels result in a breach of the Act, and that as a result, its conduct amounts to an abuse of dominance. Counsel contended that if such evidence were produced, or if it could be derived from the material before the Tribunal, this needed to be put to Sasol to give it an opportunity to respond at a factual level.

126. In our opinion, this is correct. Even if the factual basis for the claim could be derived from (for example) the expert reports submitted by the parties, Safripol plainly had to identify the particular facts on which it relied in this regard, and to explain why a specific level of price or volume was required in order to avoid a breach of the Act. Sasol is therefore prejudiced by the proposed amendment, because it does not know on what specific facts Safripol relies in order to justify the relief it now wishes to seek, and it has not been given an opportunity to answer that case.

127. The proposed relief sought is principally based not on evidence, but rather on the terms of the Agreement. In truth, it is a claim for an interdict which requires Sasol to continue, on an interim basis, to comply with the terms of the ESA as interpreted by Safripol. As such, we are not persuaded that the proposed amendment raises a triable issue or facilitates the proper ventilation of the issues between the parties.

128. Safripol submitted that Sasol is not prejudiced by the proposed amendment. It contended that Sasol was given adequate opportunity to address the draft order

by way of oral submissions at the hearing and written submissions thereafter and Sasol has neither sought a postponement nor expressly alleged prejudice.[79]

129. Save for asserting that the amendment is brought about by exchanges at the hearing between its counsel and the panel, Safripol has not explained the last-minute nature of the proposed amendment despite the fact that in the replying affidavit, Safripol had stated that the *status quo* should be preserved pending final determination of the complaint.[80]

130. In our opinion, the application for amendment cannot be granted. This is because it is prejudicial to Sasol, which has not had the opportunity to respond to the explicit or implicit factual assertions on which Safripol will rely in asserting that it is entitled to the amended relief.

131. If we are incorrect in this regard, and if the application for amendment ought to be granted, then in any event, the relief sought through the amendment cannot be granted. That is because the claim lacks a proper factual foundation, as we have explained above, and we would in any event have dismissed the application for interim relief on the ground that Safripol has not made out a proper case, on the facts, for the relief which it seeks.

132. In making the latter observation, we record that our conclusion should not be interpreted as a finding that an applicant for interim relief is required to make out a case which enables the Tribunal to determine <u>with precision</u> the level of (in this case) the price and volume which would trigger abuse of dominance and a breach

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[79] Safripol's Further Submissions Regarding Draft Order and Sasol's Objection, supra p31 at paras 73-8.
[80] Replying Affidavit, supra at para 39.

of the Act. It is not necessary, for the purposes of the present matter, to determine whether that is the burden which an applicant bears. For present purposes, it is sufficient to conclude, as we have done, that no real factual basis has been laid for the order which is sought in the proposed amendment.

133. Safripol argued that of importance in interim relief proceedings is for the Tribunal to safeguard competition in the relevant markets. It argued that the Tribunal enjoys wide procedural and remedial powers unconstrained by formalities of ordinary civil procedure and must exercise these powers to fashion reasonable and just interim relief that addresses Sasol's impugned conduct.[81]

134. In our view, this argument ignores the provisions of section 52(2) of the Act, that proceedings before the Tribunal be conducted in accordance with the principles of natural justice, which require that a respondent must know what case it is required to meet. Further, the Tribunal's rules require interim relief applications to be brought on notice of motion, supported by an affidavit "*setting out the facts on which the application is based*".[82] Further, the Act obliges the Tribunal, before granting interim relief, to give the respondent a reasonable opportunity to be heard, having regard to the urgency of the proceedings.[83]

135. These requirements cannot be met where the necessary factual foundation of the claim to the relief sought has not been pleaded.

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81 Ibid at paras 14-17.
82 Tribunal Rule 26(1).
83 Section 49C(2)(a).

Conclusion

136. In light of the above, we conclude that the application for interim relief must be dismissed.

Costs

137. Section 57(1) of the Act provides that a party participating in a hearing must bear its own costs. Section 57(2) provides that the Tribunal has the power to award costs against an unsuccessful party in a complaint referral. In *BCX*, the CAC stated that the Tribunal does not have the power to order costs outside the scheme of the Act.[84]

138. Since this is an application for interim relief and not a complaint referral, we do not believe we have any power to order costs in these proceedings. Further, and in any event, we do not regard it as appropriate to award costs in this case where the merits of the complaint have yet to be finally determined.

[84] *BCX* supra para 54.

ORDER

Having considered the interim relief application in the above matter, the Tribunal makes the following Order:

1. The application is dismissed.
2. No order is made as to costs.

Signed by:Geoff Budlender
Signed at:2026-03-27 09:01:07 +02:00
Reason:Witnessing Geoff Budlender

Geoff Budlender

27 March 2026

Mr Geoff Budlender SC Date

Prof. Imraan Valodia and Prof. Thando Vilakazi concurring

Tribunal Case Managers:	Matshidiso Tseki, Sinethemba Mbeki, Thabiso Poswa and Theresho Galane
For Safripol:	Advocate Michelle Le Roux SC assisted by Advocates Kendall Turner and Ntokozo Qwabe, instructed by Roodt Mkhabela
For Sasol:	Advocate Duncan Turner SC assisted by Advocate Layne Quilliam, instructed by Cliffe Dekker Hofmeyr