

SOUTH AFRICA / JUDGMENT

Competition Commission v Pelchem Soc Limited (CO150Oct16) [2016] ZACT 108; [2016] 2 CPLR 659 (CT) (7 December 2016) [2016] ZACT 108

COURT
Competition Tribunal

BEFORE
M Mazwai, A Ndoni, I Valodia

CASE / FILE NUMBER
CO150Oct16

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competitiontribunal

COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: CO150Oct16

In the matter between:

The Competition Commission Applicant

And

Pelchem SOC Limited Respondent

Panel

: M Mazwai (Presiding Member)

A Ndoni(Tribunal Member)

M Mazwai (Tribunal Member)

Heard on

: 07 December 2016

Decided on

: 07 December 2016

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to by the
Competition Commission and Pelchem SOC Limited annexed hereto marked "A".

07 December 2016

Date

Presiding Member

Ms Mondo Mazwai

Concurring: Ms Andiswa Ndoni and Prof. I Valodia

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD IN PRETORIA

CT CASE NO:_____

CC CASE NO: 2013DEC0615

In the matter between:

THE COMPETITION COMMISSION

Applicant

AND

PELCHEM SOC LIMITED

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND

PELCHEM (SOC) LIMITED

The Competition Commission and Pelchem (SOC) Limited in the above matter hereby agree that application be made to the Competition Tribunal for an order In terms of section 490 read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended {"the Act"}, on the terms set out more fully below.

1 DEFINITIONS

For the purposes of this consent agreement the following definitions shall apply:

1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended.

1.2 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

1.3 "Complaint" means the complaint submitted by Colvic Petroleum Products (Pty) Ltd and Colvic Marketing & Engineering (Pty) Ltd in terms of section 498(2)(b) under case number 2013Dec0615.

1.4 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Pelchem.

1.5 "HOPE" means high density polyethylene.

1.6 "Joint Development Agreement" means the agreement signed between Pelchem (SOC) Limited and Marley Pipe Systems (Pty) Limited whereby Pelchem (SOC) Limited will exclusively supply surface fluorination services for polyethylene pipes and fittings to Marley Pipe Systems (Pty) Limited who will purchase such services on an exclusive basis from Pelchem and not use any competing products from alternate suppliers.

1.7 "Marley" means Marley Pipe Systems (Pty) Limited, a company incorporated in terms of the laws of South Africa, with its principal place of business at No. 1 Bickley Road, Nigel, Gauteng.

1.8 "Parties" means the Commission and Pelchem.

1.9 "Pelchem" means Pelchem (SOC) Limited, a state-owned company incorporated under the laws of the Republic of South Africa with its principal place of business at Pelindaba, Church Street West Extension in Brits, North West.

1.10 "PP" means Polypropylene.

1.11 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 THE COMPLAINT AND COMPLAINT INVESTIGATION

2.1 On 18 December 2013, the Commission received the Complaint and decided to investigate the Complaint in terms of section 498(3) of the Act.

2.2 The Complainant alleged that Pelchem and Marley have entered into a Joint Development Agreement in terms of which Pelchem is required to only surface fluorinate Marley's HOPE fuel pipes in South Africa. As a result of this Joint Development Agreement between Pelchem and Marley, Colvic alleges that it cannot enter the market for the supply of fluorinated HOPE fuel pipes.

2.3 The Commission assessed the alleged conduct in terms of the Act. Following its investigation, the Commission found the following:

2.3.1 Pelchem is the sole supplier of surface fluorination services in South Africa. Fluorination is the process whereby fluorine is used to treat various products in order to modify and improve their permeation and adhesion characteristics.

2.3.2 Marley is a manufacturer of HOPE pipes for various applications, such as pumping systems at fuel filling stations. Such pipes need to be fluorinated to prevent the fuel from leaking through the walls of the pipes.

2.3.3 On or about 10 December 2013 Pelchem concluded an ever-green Joint Development Agreement with Marley in terms of which Pelchem would exclusively supply its surface fluorination services in respect of HOPE fuel pipes to Marley in South Africa.

2.3.4 Pelchem also entered into similar exclusive Joint Development Agreements with third parties in terms of which Pelchem would exclusively supply its surface fluorination services for

(i) fuel tanks; (ii) HOPE and PP pails/bucket; and (iii) electric cables respectively.

3 CO-OPERATION

3.1 Pelchem has:

3.1.1 Provided the Commission with truthful and timely disclosure, including information and documents in its possession or under its control, relating to the alleged prohibited practices.

3.1.2 Provided full and expeditious co-operation to the Commission concerning the alleged prohibited practices.

3.1.3 Ceased to engage in, and will not in future engage in, any form of alleged prohibited practice.

3.1.4 Confirmed that it has not destroyed, falsified or concealed information, evidence and documents relating to the alleged prohibited practices.

3.1.5 Confirmed that it has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts or otherwise acted dishonestly.

4 UNDERTAKINGS

4.1 Pelchem undertakes that it will remove all clauses relating to exclusivity and evergreen duration from its existing Joint Development Agreements that involve the provision of surface fluorination services in respect of (i) HOPE pipes; (ii) fuel tanks; (iii) HOPE and PP pails/buckets; and (iv) electric cables.

4.2 Pelchem undertakes that it will not, In the future, enter into any exclusive supply agreements for the provision of surface fluorination services for, including but not limited to, HDPE fuel pipes, fuel tanks, HOPE and PP pails/buckets and electric cables.

5 GENERAL

5.1 Pelchem makes no admission of liability of any kind whatsoever for any prohibited conduct under the Act on its part.

5.2 This agreement, upon confirmation as an order by the Tribunal, is in settlement of and concludes the Complaint between the Commission and Pelchem relating to the alleged contravention by Pelchem of sections 5(1) and 8(c) of the Act that is the subject of or was investigated under the Commission case number 2013DEC0615.

For Pelchem (SOC) Limited

Dated and signed at Pretoria on the 21st day of October 2016

RAJEN NAIDOO (Duly Authorized)

ACTING MANAGING DIRECTOR - PELCHEM (SOC) LTD

For the Commission

Dated and signed at Pretoria on the 21st day of October 2016

THEMBINKOSI BONAKELE

COMMISSIONER

- THE COMPETITION COMMISSION

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