



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR006May05/SA080Jun18

In the matter between:
The Competition Commission of South Africa **Applicant**

and

Omnia Fertilizer Limited **Respondent**

In re:
The Competition Commission of South Africa **Applicant**

and

Sasol Chemical Industries **First Respondent**

Yara South Africa (Pty) Ltd **Second Respondent**

Omnia Fertilizer Limited **Third Respondent**

Panel	:	N Manoim (Presiding Member) A Ndoni (Tribunal Member) F Tregenna (Tribunal Member)
Heard on	:	25 July 2018
Addendums submitted on	:	15 June 2018 and 28 August 2018
Decided on	:	5 September 2018

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Omnia Fertilizer Limited hereto marked "A" together with the addendums to the settlement agreement annexed "B" and "C".


**Presiding Member
Mr Norman Manoim**

5 September 2018
Date

Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD IN PRETORIA

CT CASE NO: 31/CR/May05

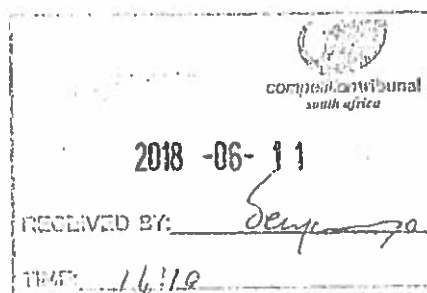
In the matter between:

**THE COMPETITION COMMISSION OF
SOUTH AFRICA**

Applicant

and

OMNIA FERTILIZER LIMITED



Respondent

In re:

**THE COMPETITION COMMISSION OF
SOUTH AFRICA**

Applicant

and

SASOL CHEMICAL INDUSTRIES

First Respondent

YARA SOUTH AFRICA (PTY) LIMITED

Second Respondent

OMNIA FERTILIZER LIMITED

Third Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION
AND OMNIA FERTILIZER LIMITED**

The Competition Commission and Omnia Fertilizer Limited agree to apply to the Competition Tribunal for the confirmation of this agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act 89 of 1998, as amended, on the terms set out below.

1 DEFINITIONS

- 1.1 "Act" means the Competition Act 89 of 1998;
- 1.2 "AECI" means African Explosives and Chemical Industries Limited, a public company registered and incorporated in accordance with the laws of the Republic of South Africa with its registered office, alternatively principal place of business at 24, The Woodlands, Woodmead, Sandton, South Africa;
- 1.3 "ANS" means ammonium nitrate solution;
- 1.4 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its offices at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.5 "DAP" means di-ammonium phosphate;
- 1.6 "IPC" means Import Planning Committee;
- 1.7 "Kynoch" means Kynoch Fertilizer (Pty) Ltd;
- 1.8 "LAN" means limestone ammonium nitrate;
- 1.9 "MAP" means mono-ammonium phosphate;
- 1.10 "NBC" means Nitrogen Balance Committee;
- 1.11 "Nitrochem" means the business of Nitrochem (Pty) Ltd, which was acquired by Omnia as a going concern in October 1995;



- 1.12 **"Nutri-Flo"** means Nutri-Flo CC and Nutri-fertilizer CC, close corporations registered and incorporated in accordance with the laws of the Republic of South Africa, with their registered office, alternatively principal place of business, at Nuri Park (opposite Compensation Station), Umhlali, Kwazulu-Natal, South Africa;;
- 1.13 **"Nutri-Flo Complaint"** means the complaint submitted by Nutri-Flo to the Commission under case number 2003Dec770 as described under 2.1 below.
- 1.14 **"Nutri-Flo Referral"** means the Complaint Referral referred to the Tribunal by the Commission under case number 31/CR/May05;
- 1.15 **"Omnia"** means Omnia Fertilizer Limited, a public company registered and incorporated in accordance with the laws of the Republic of South Africa with its principal place of business at 13 Sloane Street, Epson Downs, Bryanston;
- 1.16 **"Sasol"** means Sasol Chemical Industries Limited; a company registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered office, alternatively principal place of business, at 15 Baker Street, Rosebank Johannesburg, South Africa;;
- 1.17 **"Sasol Nitro"** means the division of Sasol Chemicals Industries Limited which encompasses the business activities and conduct which are the subject of this agreement;
- 1.18 **"Settlement Agreement"** means the consent and settlement agreement



duly signed and concluded between the Commission and Sasol on 18 May 2009;

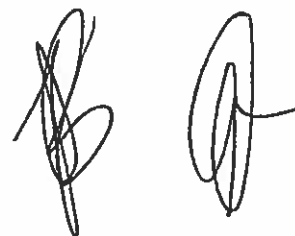
- 1.19 "Parties" means the Commission and Omnia;
- 1.20 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its offices at 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and
- 1.21 "Yara" means Yara (South Africa) (Pty) Limited, a company previously known as Kynoch Fertilizer (Pty) Limited (hereinafter referred to, for convenience, as 'Kynoch') that is registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered office, alternatively principal place of business, at 272 Pretoria Avenue, Randburg, South Africa.

2 BACKGROUND

Nutri-Flo complaint

- 2.1 On 3 November 2003, Nutri-Flo lodged the Nutri-Flo Complaint with the Commission. In terms of its complaint, Nutri-Flo alleged that Sasol and its competitors (Kynoch and Nitrochem) were engaged in the following conduct:

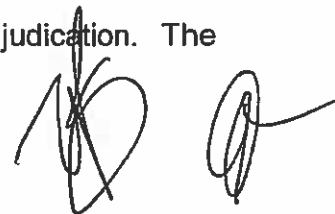
- 2.1.1 Collusion in dividing the market for LAN;



- 2.1.2 Collusion in respect of prices of LAN and of certain other fertilizers;
 - 2.1.3 Excessive pricing in respect of LAN and ANS; and
 - 2.1.4 Exclusionary conduct through an effective margin squeeze, which became increasingly severe after Nutri-Flo lodged the second complaint with the Commission, and which resulted in it closing down its granulation facility.
- 2.2 The Commission then investigated the Nutri-Flo Complaint and also tacitly initiated its own complaints. Following its investigation, the Commission found that Sasol, Kynoch and Omnia had contravened section 4 of the Act through the following anti-competitive conduct:
- 2.2.1 Collusion in constructing and dividing the market such that Sasol became the exclusive supplier of LAN to the wholesale market; and
 - 2.2.2 Agreements, arrangements and understandings to fix the prices of LAN and other fertilizers as well as allocate customers, suppliers and volumes. These arrangements were facilitated through the IPC, NBC and Export Club that amount to collusion in respect of ammonia, potash, urea, MAP, DAP and LAN.

Litigation

- 2.3 On 4 May 2005, the Commission referred Nutri-Flo's Complaint and the complaints it had initiated to the Tribunal for adjudication. The



respondents in the Nutri-Flo Referral are Sasol, Omnia and Yara. The Commission subsequently amended and supplemented its Nutri-Flo Referral.

Sasol Settlement

- 2.4 On 18 May 2009, Sasol concluded a settlement with the Commission in which Sasol admitted that it had engaged in price-fixing and market allocation contravened section 4(1)(b) of the Act.¹

3 ADMISSION

- 3.1 Omnia admits that Nitrochem engaged in price-fixing and market allocation in contravention of section 4(1)(b) of the Act as alleged in the Nutri-Flo Complaint up until the mid-2000s.

4 FUTURE CONDUCT

Omnia agrees and undertakes to:

- 4.1 prepare and circulate a statement summarising the content of this agreement to its, managers and directors within 14 (fourteen) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;
- 4.2 Omnia will continue implementing a competition law compliance

¹ Confirmed by the Tribunal on 20 May 2009.



programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contravention of the Act. This programme will be submitted to the Commission within thirty days of this settlement being confirmed by the Tribunal; and

4.3 refrain from engaging in any contraventions of the Act.

5 ADMINISTRATIVE PENALTY

5.1 After considering the factors in section 59(3), the parties agree that Omnia will pay an administrative penalty of **R30 million (thirty million rand)**.

5.2 Payment of the amount referred to in paragraph 5.1 above shall be made within thirty days of this Settlement Agreement being confirmed by the Tribunal into the Commission's bank account, details of which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4050778576
Account type:	Current Account
Branch Code:	323 345



Reference:

31/CR/May05(Omnia)

- 5.3 The amount referred to in paragraph 5.1 above shall be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

6 FULL AND FINAL SETTLEMENT

- 6.1 This Settlement Agreement is entered into in full and final settlement, upon confirmation by the Tribunal, of the proceedings between the Commission and Omnia relating to the alleged contraventions of section 4(1)(b) of the Act that are the subject of the Nutri-Flo Referral as well as the Commission's complaints that were referred in the Nutri-Flo Referral.
- 6.2 Upon confirmation of this Settlement Agreement, Omnia will withdraw its current review application before the Competition Appeal Court (162/CAC/Mar18).

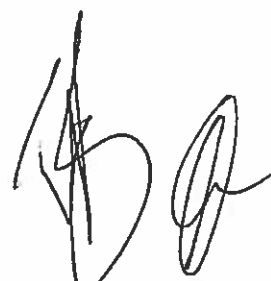
For Omnia

Dated and signed at BRYAN STAN on the 17 day of MAY 2018



Name: ADRIAAN JACQUES DE LANGE

Designation: GROUP MANAGER DEBETOR



For the Commission

Dated and signed at PRETORIA on the 28th day of MAY 2018



TEMBINKOSI BONAKELE

Commissioner



IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT CASE NO: 31/CR/May05

In the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA Applicant

and

OMNIA FERTILIZER LIMITED Respondent

In re:

THE COMPETITION COMMISSION OF SOUTH AFRICA Applicant

and

SASOL CHEMICAL INDUSTRIES First Respondent

YARA SOUTH AFRICA (PTY) LIMITED Second Respondent

OMNIA FERTILIZER LIMITED Third Respondent

ADDENDUM TO SETTLEMENT AGREEMENT BETWEEN THE COMPETITION
COMMISSION AND OMNIA FERTILIZER LIMITED

On 28 May 2018, the Competition Commission and Omnia Fertilizer Limited concluded a settlement agreement ("**Settlement Agreement**") in the above matter. The parties have agreed to amend the Settlement Agreement as follows to correct a minor error in the definitions section:

To replace paragraph 1.18 of the Settlement Agreement as follows:

"1.18 "**Settlement Agreement**" means this settlement agreement



concluded between the Commission and Omnia;"

For Omnia

Dated and signed at Berounson on the 12 day of JUNE 2018

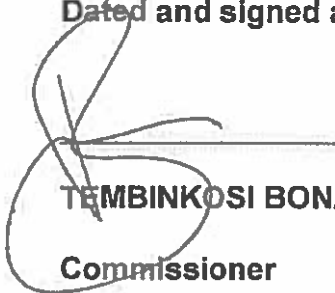


Name: ADRIAAN JACQUES DE LANGE

Designation: GROUP MANAGING DIRECTOR

For the Commission

Dated and signed at PRÉTORIA on the 14 day of June 2018



TEMBINKOSI BONAKELE

Commissioner



"C"

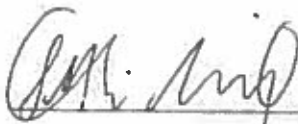
ADDENDUM TO SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND OMNIA FERTILIZER LIMITED IN REGARD TO CONTRAVENTIONS OF SECTION 4(1) OF THE COMPETITION ACT 89 OF 1998

On 28 May 2018, the Competition Commission and Omnia Fertilizer Limited ("the parties") agreed to a settlement agreement ("**Settlement Agreement**") in the above matter. Defined terms in this Addendum bear the same meanings as set out in the Settlement Agreement.

The parties have agreed to amend paragraph 3.1 of the Settlement Agreement by substituting it with the following:

- 3.1 Omnia admits that, as alleged in the Nutri-Flo Complaint and in paragraph 2.1.1 and 2.1.2 of this Settlement Agreement, Nitrochem engaged in price-fixing and market allocation in relation to ammonia, potash, urea, MAP, DAP and LAN in contravention of section 4(1)(b)(i) and (ii) of the Act, between 1998 and 2005.

DATED at _____ on this _____ day of _____ 2018



pp **Adriaan de Lange**
Group Managing Director
Omnia Fertilizer Limited

DATED at PRETORIA on this 24th day of AUGUST 2018



Tembinkosi Bonakele
Commissioner, Competition Commission

