



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO111Jul17

In the matter between:

The Competition Commission

Applicant

And

Akulu-Marchon (Pty) Ltd

Respondent

Panel : Y Carrim (Presiding Member)
A Wessels (Tribunal Member)
E Daniels (Tribunal Member)

Heard on : 06 September 2017

Decided on : 05 October 2017

Consent Agreement

The Tribunal hereby confirms the consent agreement and addendum as agreed to and proposed by the Competition Commission and Akulu-Marchon (Pty) Ltd annexed hereto marked "A".


**Presiding Member
Ms Yasmin Carrim**

05 October 2017
Date

Concurring: Mr Andreas Wessels and Mr Enver Daniels

ANNEXURE A

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: COM/TUL17
CC CASE NO: 2014Nov0687

In the matter between:

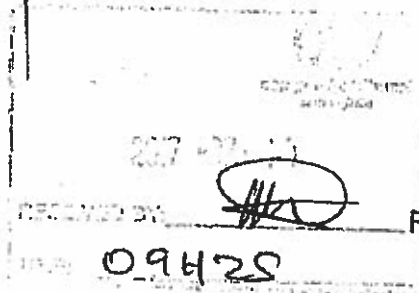
THE COMPETITION COMMISSION

Applicant

And

AKULU MARCHON (PTY) LTD

Respondent



CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND AKULU MARCHON (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) AND (ii) OF THE COMPETITION ACT, 1998

Preamble

The Competition Commission and Akulu Marchon (Pty) Ltd hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act No. 89 of 1998, as amended, in respect of a contravention of section 4(1)(b)(i) and (ii).

1. DEFINITIONS

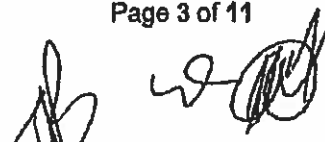
For the purposes of this consent agreement the following definitions shall apply:

- 1.1 "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.2 "AECI" means AECI Limited, a public company registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at AECI Place, 24 The Woodlands, Woodlands Drive, Woodmead, Sandton;
- 1.3 "Akulu" means Akulu Marchon (Pty) Ltd, a private company registered in accordance with the laws of the Republic of South Africa and ultimately held by AECI, with its principal place of business situated at AECI Place, 24 The Woodlands, Woodlands Drive, Woodmead, Sandton;
- 1.4 "CI" means Chemical Initiatives (Pty) Ltd a private company registered in accordance with the laws of the Republic of South Africa and ultimately held by AECI, with its principal place of business situated at AECI Place, 24 The Woodlands, Woodlands Drive, Woodmead, Sandton;
- 1.5 "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;
- 1.6 "Consent Agreement" means this agreement duly signed and concluded between the Commission, Akulu and CI;

- 1.7 "Investchem" means Investchem (Pty) Ltd, a private company registered in accordance with the laws of the Republic of South Africa, with its principal place of business at 22 Derrick Road, Kempton Park 511 Commissioner Street, Boksburg;
- 1.8 "LAB" means linear alkyl benzene, a key input material into Surfactants;
- 1.9 "LAE" means linear alcohol ethoxylate, a key input material into Surfactants;
- 1.10 "Sulphonic Acid" means an organic acid containing sulphur and used as an input into Surfactants;
- 1.11 "Surfactants Business" means the surfactants business of AECl, previously operated by the Akulu division of AECl and currently operated by the Cl division of AECl; and
- 1.12 "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. INVESTIGATION AND FINDINGS OF THE COMMISSION

- 2.1. On 4 December 2014, the Commission conducted a search and seizure

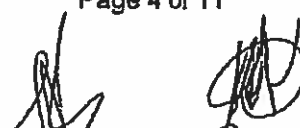
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operation under Case No. 2014Nov0687 at the manufacturing premises of Investchem and Akulu and seized hard copy documents and electronic data after having received information regarding possible contraventions of section 4(1)(b)(i) and (ii) of the Competition Act 89 of 1998 in relation to the supply and manufacture of Surfactants by Investchem and Akulu. Where appropriate, Investchem and Akulu are referred to as the "Respondents".

2.2. The Commission's investigation revealed the following:

2.2.1. During the period 2003 to 2013, the Respondents being competitors and/or potential competitors in the manufacture and supply of Surfactants concluded an agreement to fix prices and divide the market by allocating customers.

2.2.2. The Respondents discussed and agreed on increasing prices of Surfactants which would entail increased margins. In terms of the agreement the Respondents would discuss increases of input costs, specifically costs of LAB and LAE and this would enable them to agree on the market price to customers. The Respondents would then increase their prices by the same amount and at the same time in response to increases in input costs.



2.2.3. The Respondents also agreed to divide the market by allocating customers to each other and agreeing to not pursue each other's allocated customer. To achieve this, the Respondents would quote a much higher price if a customer belonging to the other would request a quote.

2.3. During 2014 and 2015, various businesses within AECI's Chemicals Cluster, including those operated by AECI's Akulu division, were transferred to AECI's CI division. Akulu continues to hold various assets. The future conduct agreed to in this agreement is binding to CI in as far as it relates to the surfactants business of AECI, previously operated by the Akulu division of AECI and currently operated by the CI division of AECI.

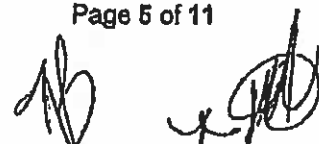
3. ADMISSION

3.1. Akulu admits that it engaged in the conduct set out in clause 2.2 above in contravention of section 4(1)(b)(i) and (ii) of the Act.

4. CO-OPERATION

4.1. Akulu confirms that it has ceased engaging in the conduct set out in clause 2 above.

4.2. CI agrees to fully co-operate with the Commission in its investigation and prosecution of the other participant(s) in the alleged contravention. This

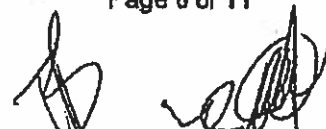


co-operation includes, but is not limited to the following:

- 4.2.1. To the extent that it is in existence, the provision of evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this Consent Agreement.
- 4.2.2. Testifying in any complaint referral which may arise in respect of this conduct.
- 4.2.3. Availing its employees to testify as witnesses for the Commission. Where witnesses are not in CI's employ, but previously were in the employ of Akulu, CI undertakes to use its best endeavours to procure the co-operation of such witnesses with the Commission in the manner aforesaid.

5. ADMINISTRATIVE PENALTY

- 5.1. Akulu agrees that it is liable to pay an administrative penalty of R13 905 600. 40 (thirteen million nine hundred and five thousand six hundred and forty cents). This amount is less than 10% of Akulu's annual turnover for the financial year ended December 2013.
- 5.2. Akulu shall pay the abovementioned amount to the Commission in one instalment. This payment shall be made within 30 days of the confirmation



of the Consent Agreement as a consent order by the Tribunal.

5.3. The payments shall be made 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: 4087641778

Account type: Current Account

Branch Code: 632005

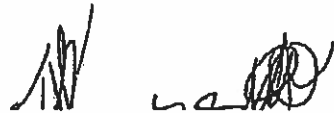
Reference: Case Number: 2014Nov0687/Akulu

5.4. The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

6. AGREEMENT REGARDING FUTURE CONDUCT

6.1. CI undertakes that the Surfactants Business shall refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future.

6.2. CI shall implement and monitor a competition law compliance programme for the Surfactants Business. Such programme shall incorporate corporate

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governance designed to ensure the employees, management, directors and agents of the Surfactants Business do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contraventions of the Act.

6.3. As regards the competition law compliance programme referred to above, CI undertakes to submit to the Commission a copy thereof within ninety (90) days of confirmation of the Settlement Agreement as an Order of the Tribunal

6.4. CI shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at the Surfactants Business within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

6.5. In addition to Akulu paying the administrative penalty, CI has agreed to the following behavioural remedy:

6.5.1. CI undertakes that it shall supply an existing or prospective customer any of the types of Surfactants that the Surfactants Business manufactures or supplies at the time a customer orders Surfactants from CI.

6.5.2. CI undertakes to supply the Surfactants referred to in clause

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6.5.1 above at its standard prices and on its ordinary terms and conditions prevailing at the time an existing or prospective customer orders Surfactants from CI.

6.5.3. CI's obligations in terms of the condition in clause 6.5.1 above shall be excused if any delay in supply, or failure to supply, was beyond the control of CI or which CI could not have avoided or overcome (including without limitation, as a result of electrical failure, fire, flood, explosion, breakdown of equipment or machinery, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage or any prohibition by any governments or other legal authority which is not in force on the date at which this consent agreement was signed).

6.5.4. This undertaking shall take effect from the date on which this Consent Agreement is made an order of the Tribunal.

6.6. CI furthermore undertakes to provide the Commission with the following:

6.6.1. bi-annual reports regarding the Surfactants Business' orders and sales customers for a period of 4 (four) years, and thereafter annual reports for a period of 4 (four) years;

6.6.2. From the date the Consent Agreement is made an order of the Competition Tribunal, such information as the Commission may reasonably require regarding CI's compliance with the undertaking in clauses 6.5 above.

6.7. The Commission shall be entitled to request such reports, information and supporting documentation referred to in clause 6.6 above at any time on reasonable notice to CI.

7. FULL AND FINAL SETTLEMENT

7.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No. 2014Nov0687 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Akulu relating to the conduct that is the subject of the Commission's investigation under Case No. 2014Nov687.

For Akulu



DEAN KEITH MURRAY

Executive: Chemicals Cluster

Dated and signed at WOODMEAD on the 6th day of JUNE 2017



For CI



STEPHEN JAMES FOSTER
Managing Director

Dated and signed at WOODMEAD on the 6th day of JUNE 2017

For the Commission



TEMBINKOSI BONAKELE
Commissioner

Dated and signed at PRETORIA on the 21st day of JUNE 2017



IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CO111JUL17

CC CASE NO: 2014Nov0687

In the matter between:

THE COMPETITION COMMISSION

And

AKULU MARCHON (PTY) LTD

 competition tribunal south africa
2017 -10- 04
RECEIVED BY: 
TIME: 14:00

Applicant

Respondent

ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE COMPETITION COMMISSION AND AKULU MARCHON (PTY) LTD DATED 21 JUNE 2017.

It is hereby recorded, by agreement between the parties, that the consent agreement concluded between the Competition Commission ("the Commission"), Akulu Marchon (Pty) Ltd ("Akulu"), and Chemical Initiatives (Pty) Ltd ("CI") concluded on 21 June 2017 and presented for confirmation by the Competition Tribunal on 06 September 2017 ("the Consent Agreement") is amended as follows:




1. AD PARAGRAPH 6 (AGREEMENT REGARDING FUTURE CONDUCT)

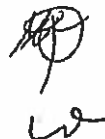
1.1. Paragraph 6.5.1 is amended as follows:

CI undertakes that for a period of 4 (four) years from the date of confirmation of the Consent Agreement, it shall supply any existing or prospective customers any of the types of Surfactants that the Surfactants Business manufactures or supplies at the time a customer orders Surfactants from CI.

1.2. Paragraph 6.6.1 is amended as follows:

Bi-annual reports regarding the Surfactants' Businesses' orders from and sales to customers. These reports must detail the following information:

- i) the name of each customer;
- ii) whether the customer is new or existing, and if existing the length of time the Surfactants' Businesses' has sold Surfactants to the customer;
- iii) the type of Surfactants sold to the customer during the reporting period;
- iv) for each type of Surfactants, the volumes sold to the customer during the reporting period; and
- v) for each type of Surfactants, the Rand value of sales to the customer during the reporting period.

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1.3. The following Paragraph is inserted as paragraph 6.6.3

The obligation imposed on CI under clause 6.6.1 shall endure for a period of 4 (four) years from the date of confirmation of the Consent Agreement.

2. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning ascribed to them in the Consent Agreement

For AKULU



Name: DEAN KEITH MURRAY

Designation: Executive- Chemicals Cluster

Dated and signed at WOODMEAD on the 19th day of SEPTEMBER 2017

For CI



Name: STEPHEN JAMES FOSTER

Designation: Managing Director

Dated and signed at WOODMEAD on the 19th day of SEPTEMBER 2017

For the COMMISSION

TEMBINKOSI BONAKELE

Commissioner

Dated and signed at Pretoria on the 3rd day of Oct 2017


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