



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO112Jul17

In the matter between:

The Competition Commission

Applicant

And

Investchem (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 Investchem (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: CO112Jul17
CC CASE NO: 2014Nov0687

In the matter between:

THE COMPETITION COMMISSION

And

INVESTCHEM (PTY) LTD

RECEIVED BY: <u>[Signature]</u>	Applicant
09H25	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 INVESTCHEM (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) AND (ii) OF THE COMPETITION ACT, 1998

Preamble

The Competition Commission ("Commission") and Investchem (Pty) Ltd ("Investchem") hereby agree that an application be made to the Competition Tribunal ("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 (the "Act"), in respect of a contravention of section 4(1)(b)(i) & (ii) of the Act.

[Signature]

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 "AEO" means alcohol ethoxylate, a key input material into sodium lauryl ether sulphate;
- 1.3 "Akulu" means Akulu-Marchon (Pty) Ltd, a private company registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at ChemPark Complex, 200 Bergivier Drive, Chloorkop, Kempton Park;
- 1.4 "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 dū Campus, 77 Melntjies Street, Sunnyside, Pretoria, Gauteng;
- 1.5 "Complaint" means the complaint referred to in clause 2.1 below;
- 1.6 "Confirmation Date" means the date of confirmation by the Tribunal of the Consent Agreement as an order of the Tribunal;
- 1.7 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Investchem;



- 1.8 "Investchem" means Investchem (Pty) Ltd, a private company duly incorporated in accordance with the laws of the Republic of South Africa with its principal place of business at 22 Derrick Road, Spartan, Kempton Park, Gauteng;
- 1.9 "LAB" means linear alkyl benzene, a key input material into sulphonic acid;
- 1.10 "Parties" means the Commission and Investchem;
- 1.11 "Respondent" means Investchem;
- 1.12 "Surfactant" means Sulphonic Acid (Vestacid SA), Sodium Lauryl, Ether Sulphate (Vestol EC70, Vestol EC282, Vestol ES25), Triethanolamine Lauryl Sulphate (Vestol TL40), Pearlescent Surfactant Blend (Vestol PSC40 and Vestol PSC), Cocamide DEA (Vestamid CDE), Sodium Dodecyl Benzene Sulphonate (Vestacid N30) and Monoisopropyl-amine Dodecylbenzene Sulphonate (Vestacid IP90), which products are key input materials used in the manufacturing in South Africa of household detergents and personal care products (such as cosmetics e.g foam bath and shampoo); and
- 1.13 "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 dli Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

R.W. 

2. INVESTIGATION AND FINDINGS OF THE COMMISSION

2.1. On 26 November 2014 the Commission initiated a complaint against Investchem for a contravention of section 4(1)(b)(i) and (ii) of the Act.

2.2. On 04 December 2014, the Commission conducted a search and seizure operation at the premises of Investchem and Akulu and seized hard copy documents and electronic data after having received information regarding possible contravention of section 4(1)(b)(i) and (ii) of the Act in the market for the supply and manufacture of Surfactants by Investchem and Akulu. Where appropriate, we shall refer to Investchem and Akulu collectively as the "Respondents".

2.3. The Commission's investigation under Case No. 2014Nov0687 revealed the following:

2.3.1. During the period 2003 to 2013, the Respondents, being competitors in the manufacture and supply of Surfactants in South Africa, had an agreement to fix prices and divide the market by allocating customers.

2.3.2. During this period 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

AEO, and this would enable them to agree on the market price of Surfactants 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.

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

3. ADMISSION

3.1. Investchem admits that during the period 2003 to 2013 it fixed the prices of Surfactants and divided the Surfactant market in South Africa in contravention of section 4(1)(b)(i) and (ii) of the Act.

4. ADMINISTRATIVE PENALTY

4.1. Investchem agrees that it is liable to pay an administrative penalty of R23 423 155.00 (twenty three million four hundred and twenty three thousand and one hundred and fifty five rand). This amount is less than 10% of Investchem's annual turnover in, into or from South Africa for the financial year ended December 2013.

4.2. Investchem shall pay the abovementioned amount to the Commission in three equal instalments over a period of two years as follows -

4.2.1 the first instalment of R7,807,718 within 20 business days from the Confirmation Date;

4.2.2 the second instalment of R7,807,718 on the first anniversary of the Confirmation Date; and

4.2.3 the third instalment of R7,807,718 on the second anniversary of the Confirmation Date.

4.3. The payments referred to in clauses 4.2.1 to 4.2.3 above 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/Investchem

R.W. 

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

4.5. Interest will be levied from the 13th (thirteenth) month after the Confirmation Date on the remaining outstanding balance at the rate of interest on debts owing to the state prescribed by the Minister of Finance in terms of section 80(1)(a) of the Public Finance Management Act No.1 of 1989, as amended. At the time of this Settlement Agreement the applicable rate was 10.5% per annum.

5. AGREEMENT REGARDING FUTURE CONDUCT

5.1. Investchem confirms that it has ceased engaging in the conduct set out in clause 2 above.

5.2. Investchem undertakes to refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future.

5.3. Investchem shall implement and monitor a competition law compliance 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 contraventions of the Act;

- 5.4. As regards the competition law compliance programme referred to above, Investchem undertakes to submit to the Commission a copy thereof within ninety (90) business days of the Confirmation Date.
- 5.5. Investchem shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Investchem within 60 (sixty) business days from the Confirmation Date.
- 5.6. In addition to the administrative penalty Investchem has also agreed to the following additional behavioural remedies.
- 5.7. In particular, Investchem undertakes for a period of 4 years from the Confirmation Date to supply any existing or prospective customers with Surfactants that Investchem manufactures and / or supplies, provided that the orders for such supplies comply with Investchem's then prevailing standard terms and conditions. These Surfactants shall be supplied at Investchem's then prevailing prices and on its ordinary terms and conditions prevailing at the time an order is made.
- 5.8. The undertaking set out in clause 5.7 above shall take effect from the Confirmation Date.
- 5.9. Further to the undertaking above, Investchem undertakes to provide the Commission with:

12.~


5.9.1. bi-annual reports regarding its orders and sales to customers for a period of 2 (two) years; and thereafter annual reports for a period of 2 (two) years, and

5.9.2. such information and supporting documents as the Commission may reasonably require regarding Investchem's compliance with the undertakings set out in clauses 5.7 above.

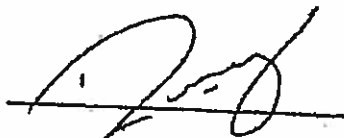
5.9.3. The Commission shall also be entitled to request such reports, information and supporting documentation referred to in clause 5.9.1 and 5.9.2 above at any time on reasonable notice to Investchem.

5.10. Investchem may at any time, on good cause shown, approach the Tribunal for the undertakings in clause 5.7 to 5.9 to be lifted, revised or amended.

6. FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement of the Complaint and the Commission's investigation under Case No. 2014Nov0687, as described in clause 2 above and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Investchem relating to the Complaint and the conduct that is the subject of the Commission's investigation under Case No. 2014Nov0687, as described in clause 2 above.

For Investchem



Dated and signed at SPARTAN on the 21 day of JUNE 2017

For the Commission



TEMBINKOSI BONAKELE
Commissioner

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

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CO112JUL17

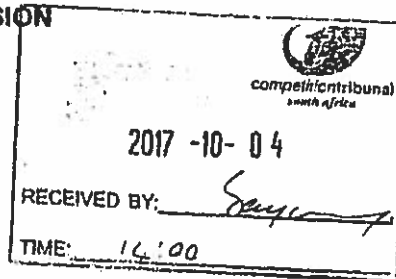
CC CASE NO: 2014Nov0687

In the matter between:

THE COMPETITION COMMISSION

And

INVESTCHEM (PTY) LTD



Applicant

Respondent

ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND INVESTCHEM (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") and Investchem (Pty) Ltd ("Investchem"), signed on 21 June 2017 and presented for confirmation by the Competition Tribunal on 06 September 2017 ("the Consent Agreement") is amended as follows:

2.2

1. AD PARAGRAPH 5 (AGREEMENT REGARDING FUTURE CONDUCT)

1.1. The following new definition is inserted as paragraph 1.14:

"Surfactants Business" means the surfactants business of Investchem;

1.2. The following Paragraph is inserted as paragraph 5.7.1;

Investchem's obligations in terms of the conditions in clause 5.7 above shall be excused if any delay in supply, or failure to supply, was beyond the control of Investchem or which Investchem 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).

1.3. Paragraph 5.9.1 is amended as follows:

Bi-annual reports regarding its orders from and sales to customers in respect of the Surfactants Business. These reports must contain the following detailed information:

- i) The name of the customer.


12

- ii) whether the customer is new or existing, and if existing the estimated 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.

1.4. The following Paragraph is inserted as paragraph 5.9.4

The obligation imposed on Investchem in terms of this clause 5.9 shall endure for a period of 4 (four) years from the Confirmation Date.

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 INVESTCHEM PTY LTD



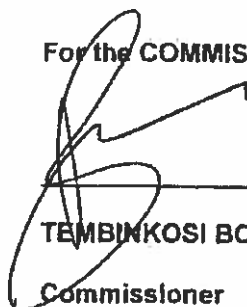
Name: ROBERT WELLE

Designation JOINT MANAGING DIRECTOR

Dated and signed at SPARTAN **on the** 20 **day of** SEPTEMBER **2017**



For the COMMISSION



TEMBINKOSI BONAKELE
Commissioner

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