

**IN THE COMPETITION TRIBUNAL
THE REPUBLIC OF SOUTH AFRICA**

**CASE NO: 48/CR/Aug10
(016600)**

In the matter between:

SASOL CHEMICAL INDUSTRIES (PTY) LIMITED

APPLICANT

and

THE COMPETITION COMMISSION OF SOUTH AFRICA FIRST RESPONDENT

JULIUS LEBI

SECOND RESPONDENT

MIRIAM JACOB

THIRD RESPONDENT

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	06 May 2013
Order issued	:	06 May 2013

ORDER: URGENT APPLICATION TO COMPEL SUBPOENAED DOCUMENTS

After having heard the parties in this application the Competition Tribunal ("Tribunal") orders as follows:

1. The Second Respondent is ordered to produce the documents set out in "Annexure A" attached hereto by 17h30 on Wednesday, 08 May 2013.
2. The Third Respondent is ordered to produce the documents set out in "Annexure B" attached hereto by 17h30 on Wednesday, 08 May 2013.

3. The documents identified in the respective annexures are to be tendered on a confidential basis subject to confidentiality undertakings by the Applicant's legal team and independent experts.

4. To the extent that the documents sought do not exist, an affidavit to that effect must be filed.



Norman Manoim
Presiding Member

Concurring: Yasmin Carrim and Andreas Wessels

ANNEXURE A

1. The management accounts prepared for the management or board of Usabco (Pty) Ltd on a monthly or (failing that) quarterly basis, including any summaries of the financial performance of Usabco circulated to members of the board of directors of Usabco or its management, from 2003 to 2011 (save for information unrelated to the operational performance of the company, such as directors' salaries and dividends).
2. In the event that management accounts of the sort set out in paragraph 1 above do not exist for the relevant period, the full audited financial statements of Usabco prepared for each year from 2003 to 2011.
3. The board packs and board minutes of the board of directors or (if the former do not exist) minutes of monthly management meetings, of Usabco, from 2003 to 2011 insofar as they relate to the following issues:
 - 3.1. the effect which polypropylene was having or had on Usabco's business over a particular period;
 - 3.2. the profitability of Usabco during the complaint period;
 - 3.3. the need to toll manufacture certain of the Usabco's products in China;
 - 3.4. Usabco's Chinese operators;
 - 3.5. rebates and other incentives offered by SCI;
 - 3.6. Usabco's sales to the retail sector;
 - 3.7. Usabco's purchases of polypropylene;
 - 3.8. production costs (generally);

- 3.9. the effect which imports were having or had on the Usabco's business;
and
- 3.10. Usabco's competitiveness against imported product.
4. The analyses of Mr Mike Rex as referred to in paragraph 12 of the second respondent's witness statement filed in relation to these proceedings.
5. All benchmarking exercises performed or commissioned by Usabco during the period 2003 to 2010, as referred to in paragraph 24 of the second respondent's witness statement.

ANNEXURE “B”

1. The management accounts prepared for the management or board of SA Leisure (Pty) Ltd on a monthly or (failing that) quarterly basis, including any summaries of the financial performance of SA Leisure circulated to members of the board of directors of SA Leisure or its management, from 2003 to 2011 (save for information unrelated to the operational performance of the company, such as directors' salaries and dividends).
2. In the event that management accounts of the sort set out in paragraph 1 above do not exist for the relevant period, the full audited financial statements of SA Leisure prepared for each year from 2003 to 2011.
3. The board packs and board minutes of the board of directors or (if they do not exist) minutes of monthly management meetings, of SA Leisure, from 2003 to 2011 insofar as they relate to the following issues:
 - 3.1. SA Leisure's decision to use imported polypropylene as an input from time to time and the disadvantages associated therewith, as referred to in paragraph 9 of the third respondent's witness statement;
 - 3.2. SA Leisure's difficulties in competing in the South African market against imports, as referred to in paragraph 17 of the third respondent's witness statement;
 - 3.3. SA Leisure's sales and competitiveness in export markets and the reasons for its relative "uncompetitiveness" in these markets, as referred to in paragraphs 18, 19 and 25 of the third respondent's witness statement;
 - 3.4. Strategies employed by SA Leisure to "win more business", as referred to in paragraph 21 of the third respondent's witness statement;

- 3.5. SA Leisure passing on savings, in any form, to customers, as referred to in paragraph 21 of the third respondent's witness statement;
- 3.6. Constraints on SA Leisure in the relevant period insofar as making a greater range of products than it currently does, as referred to in paragraph 22 of the third respondent's witness statement;
- 3.7. SA Leisure's production capacity and the apparent under-utilisation thereof, as referred to in paragraph 23 of the third respondent's witness statement; and
- 3.8. Constraints on SA Leisure in the relevant period in respect of "design development", as referred to in paragraph 24 of the third respondent's witness statement.