competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: IR095AUG22

In the matter between:

INDUSTRIAL GAS USERS ASSOCIATION OF SOUTHERN AFRICA	Applicant

And

SASOL GAS (PROPRIETARY) LIMITED	First Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Second Respondent
COMPETITION COMMISSION OF SOUTH AFRICA	Third Respondent

And

Case No: OTH110SEP22

In the matter between:

SASOL GAS (PROPRIETARY) LIMITED	Applicant

And

COMPETITION COMMISSION OF SOUTH AFRICA	First Respondent
INDUSTRIAL GAS USERS ASSOCIATION OF SOUTHERN AFRICA	Second Respondent
EGOLI GAS (PROPRIETARY) LIMITED	Third Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Fourth Respondent

Panel:	Ms M Mazwai (Presiding Member) Adv G Budlender SC (Tribunal Member) Mr A Roskam (Tribunal Member)
Heard on:	6 and 7 February 2023
Order Issued on:	12 May 2023
Reasons Issued on:	12 May 2023

ORDERS AND REASONS FOR DECISION

INTRODUCTION

1. In Case No: IR095Aug22 (*"the IGUA-SA application"*), the Industrial Gas Users Association of Southern Africa ("IGUA-SA") seeks orders that:

   1.1 Sasol Gas Ltd (*"Sasol Gas"*) is interdicted from increasing its current gas prices above the maximum price that was generated under the Second Methodology for the period Q3 2021-Q2 2022, namely R68.00/GJ;

   1.2 that order is effective from [as amended] the date of the order until the conclusion of the investigation into an allegedly prohibited practice currently being conducted by the Competition Commission in response to the Applicant's excessive-pricing complaint of 5 May 2022;

   1.3 orders for costs; and

   1.4 further and/or alternative relief.

2. In Case No: OTH110Sep22 *("the Sasol Gas application")*, Sasol Gas seeks orders as follows in Part A:

   2.1 suspending the legal validity of the Summons issued by the Competition Commission (*"the Commission"*) in respect of Sasol Gas, which was delivered to Sasol Gas on 12 August 2022;

   2.2 alternatively, staying the legal effect of the Summons;

2.3 alternatively, staying the execution of the Summons;

2.4 orders for costs; and

2.5 further and/or alternative relief.

3. The two applications have a common factual background. They relate to the same series of events, and they raise issues which in some respects are the same or similar. By agreement, the two applications were heard together, over two days.

4. We first briefly set out the factual background to the two applications. We then deal with the application by Sasol Gas, and thereafter with the application by IGUA-SA.

THE FACTUAL BACKGROUND

5. Sasol Gas supplies natural gas to, *inter alia,* the members of IGUA-SA.

6. Sasol Gas is the only upstream importer of gas and a monopoly supplier of gas traders in South Africa. In the late 1990s, Sasol Gas built a pipeline to pump gas from Mozambique into South Africa. In 2001, as consideration for Sasol Gas' investment in the pipeline, the South African government concluded the Mozambican Gas Pipeline Agreement with Sasol Gas, in terms of which Sasol Gas was given the right to determine the price of gas it pumped into South Africa, for a period of 10 years. Sasol Gas has a market

share well above 45% of the market for the supply and trading of piped gas in South Africa.

7. In terms of section 21(1)(p) of the Gas Act 48 of 2001, the National Electricity Regulator of South Africa (*"NERSA"*) determines the maximum prices for distributors, reticulators and classes of consumers of gas.

8. On 31 March 2021, NERSA made a number of determinations of the maximum price of gas ("Maximum Price Decision").[1] They included the following:

> *"For the period 01 July 2021 to 30 June 2022, the 12-month average prices of the period 01 July 2020 to 30 June 2021 will be used.*
>
> *"For the period 01 July 2022 to 30 June 2023, the 12-month average prices of the period 01 July 2021 to 30 June 2022 will be used.*
>
> *"For both adjustments, the NBP that is as prescribed in the methodology is published with a 3-month lag and this will be the case in the adjustments."*

9. The reference to the *"12-month average prices"* is to the calculation of the weighted average of certain specified international gas prices.

[1] Certain of the determinations were retrospective, for reasons which are not relevant here.

10. The maximum gas price determined for the period 1 July 2021 to 30 June 2022 was R68.39/GJ.

11. On 5 May 2022 IGUA-SA lodged an excessive-pricing complaint with the Competition Commission under section 49B(2)(b) of the Competition Act ("the Act").

12. According to Sasol Gas, as a result of fluctuations in international gas prices, the adjustment method approved by NERSA in the Maximum Price Decision yielded a maximum gas price of R273.43/GJ for FY 2023.

13. Having regard to the negative impact of such a price on its customers *"as well as the rationality test in the methodology"*, Sasol Gas elected not to apply that maximum price, and to charge instead a price of R133.34/GJ.

14. At the end of May 2022, *"out of caution"*, Sasol Gas approached NERSA requesting that it confirm that the price Sasol Gas intended to charge in FY 2023 was in compliance with the Maximum Price Decision.

15. NERSA indicated to Sasol Gas that the nature of this approach for compliance confirmation did not fall within the existing approval authorities and processes of NERSA.

16. Sasol Gas informed its customers that it intended to increase the price of gas to them, effective from 1 August 2022. It stated that it would charge the price of R133.34/GJ.

17. Consistently with this, Sasol Gas issued invoices to its customers on the basis of a price of R133.34/GJ. There was an outcry about this increased price.

18. As a result of the outcry, on 17 August 2022 Sasol Gas wrote to its customers informing them that it was continuing with its engagement with NERSA, in the hope that the matter could be finalised amicably and swiftly. Pending these ongoing engagements with NERSA, Sasol Gas had decided not to implement the new *"actual"* gas price of R133.34/GJ with effect from 1 August 2022 as had previously been announced.

19. Sasol Gas stated that pending the outcome of the further engagements with NERSA, it would continue to charge an actual GE price of R68.39/GJ, and that it would in due course inform its customers of the new price for FY 2023 and implementation date, pursuant to the outcome of its discussions with NERSA.

20. The consequence of these events is that IGUA-SA and its members did not know what price would be charged going forward. What they knew was that the price would likely be increased substantially.

21. Subsequently, in its answering affidavit in the IGUA-SA application, Sasol Gas stated that NERSA had already publicly indicated that it was likely to approve a maximum price in the region of R100/GJ for FY 2023. Sasol Gas stated that it was therefore improbable that it would be given permission to charge a maximum price of R133.34/GJ in FY 2023.

22. NERSA and Sasol Gas apparently took the view that this was a matter to be discussed between the two of them, without reference to IGUA-SA and its members. It appeared likely that the price would be in the range between R100/GJ (the approximate price which, according to Sasol Gas, was favoured by NERSA) and R133.34/GJ (the price preferred by Sasol Gas).

23. In a letter of 26 August 2022, Sasol Gas committed not to implement the proposed increase while engagements with NERSA were ongoing, and undertook to give its customers reasonable notice before it implemented any future price increase. It stated that it would also inform the Tribunal in this regard.

24. At the hearing, counsel for Sasol Gas was asked what the nature was of this promised *"reasonable notice"*: Was it reasonable notice to enable the customers to put their affairs in order in relation to the forthcoming increased price, or was it in order to enable them to bring such challenges to the increased price as they might consider appropriate? Counsel advised that it was the former, namely, a reasonable time to give the customers of Sasol Gas an opportunity to put their affairs in order in order to implement the increased price.

25. Against this background, we now deal with the application by Sasol Gas in Case No: OTH110Sep22.

THE SASOL GAS APPLICATION

26. On 4 February 2022, Egoli Gas filed a complaint with the Competition Commission in terms of section 49B(2)(b) of the Competition Act. It alleged that Sasol Gas has engaged in various contraventions of the Act.

27. As we have noted above, on 5 May 2022 IGUA-SA also filed a complaint with the Commission in terms of section 49B(2)(b) of the Competition Act. It contended that Sasol Gas was in breach of section 8(1)(a) of the Act by charging an excessive price to the detriment of consumers or customers.

28. Section 49B(3) of the Act provides that on receiving a complaint in terms of section 49B, the Commissioner must direct an inspector to investigate the complaint as quickly as practical.

29. On 18 July 2022, the Commissioner delivered a request for information to Sasol Gas. The request sought the disclosure of extensive information. When Sasol Gas did not provide the information requested, on 12 August 2022 the Commission delivered a Summons to Sasol Gas. The Summons required the disclosure of the information which had been requested. The Commission refused a request by Sasol Gas to suspend the Summons.

30. Sasol Gas thereafter launched the Sasol Gas application. The application was in two parts:

    30.1 In Part A, Sasol Gas sought an order suspending the legal validity and effect of the Summons, alternatively staying the legal effect of the

Summons, further alternatively staying the execution of the Summons, pending the determination of Part B.

30.2 In Part B, Sasol Gas would seek orders declaring the decision to investigate and the issuing of the Summons invalid and unlawful, and reviewing and setting aside those decisions.

31. Sasol Gas sought this relief on two main grounds. First, it asserted that the Commission did not have jurisdiction in respect of this matter, as NERSA had determined the maximum price of gas, doing so in terms of the power conferred on it by the Gas Act. Second, it contended that the decision to issue the Summons was reviewable in terms of the Promotion of Administrative Justice Act 3 of 2003 (PAJA), and in any event under the principle of legality.

The jurisdictional challenge

32. Sasol Gas contended that as section 21(1)(p) of the Gas Act 48 of 2001 empowers the Gas Regulator (which is NERSA) to determine (*"approve"*) the maximum prices of gas for distributors, reticulators and all classes of consumers where there is inadequate competition as contemplated in Chapters 2 and 3 of the Competition Act, and as NERSA had made such a determination, it was beyond the power of the competition authorities to determine that Sasol Gas had engaged in excessive pricing.

33. Section 3(1) of the Competition Act provides that the Act *"applies to all economic activity within, or having an effect within, the Republic"*, subject to certain exceptions which are not relevant here. The sale and distribution of gas is plainly such an activity.

34. The Act recognises that there may be more than one regulatory authority in respect of particular conduct. Section 3(1A)(a) provides that insofar as the Competition Act applies to an industry, or sector of an industry, that is subject to the jurisdiction of another regulatory authority, which authority has jurisdiction in respect of conduct regulated in terms of Chapter 2 or 3 of the Act, the Competition Act must be construed as establishing *"concurrent jurisdiction"* in respect of that conduct.

35. On the face of it, this means that there are therefore two regulatory authorities which have jurisdiction here: NERSA may determine the maximum price of gas under the Gas Act, and the competition authorities may investigate and determine whether there has been excessive pricing under the Competition Act. Concurrent jurisdiction means that each of those authorities is to exercise the powers conferred upon it by its governing statute.

36. There is no basis for contending that the competition authorities have been deprived of their functions in this regard under the Competition Act by the provisions of the Gas Act. Rather, the two Acts create a system of concurrent jurisdiction.

37. Section 3(1A)(b) addresses the *"manner in which the concurrent jurisdiction is exercised"* in terms of the Competition Act and any other public regulator: the concurrent jurisdiction *"must be managed, to the extent possible, in accordance with any applicable agreement concluded in terms of sections 21(1)(h) and 82(1) and (2)"* of the Competition Act.

38. Sasol Gas relied on this provision, and the Memorandum of Agreement which was concluded between the Competition Commission and NERSA in terms of those sections, as buttressing its contention that the jurisdiction of the Competition Commission is excluded.

39. This contention is misconceived:

39.1 The premise of section 3(1A)(b) is the existence of concurrent jurisdiction: in other words, it is premised on the proposition that both authorities must and will exercise their powers.

39.2 The section provides for the *"manner in which"* that concurrent jurisdiction is to be exercised, namely, by way of an agreement between the two regulatory authorities.

39.3 The section does not purport to provide that an agreement will remove the concurrent nature of the jurisdiction, by providing that only one of the two regulatory authorities will exercise its statutory functions, to the exclusion of the other: to the contrary, it contemplates that each of

them will exercise its statutory functions, and that the agreement will regulate *"the manner"* in which each of them does so.

39.4 The Memorandum of Agreement does not purport to remove the jurisdiction of the Competition Commission or, for that matter, NERSA. Rather, it regulates co-operation between the two regulatory authorities in the exercise of their respective functions.

40. In any event, the two regulatory authorities could not, by way of agreement between them, decide that one or the other of them would not exercise its statutory regulatory functions, or would pass on those functions to the other. Any such agreement would be *ultra vires*.

41. It follows that NERSA and the Competition Commission have concurrent jurisdiction with regard to certain aspects of the pricing of gas: NERSA determines the maximum price of gas, and the Competition Commission investigates and addresses allegations of inter alia excessive pricing in respect of gas. Each of the regulatory authorities is empowered, and in fact obliged, to carry out its statutory functions in terms of its governing legislation.

42. The fact that there will be some overlap or even duplication of functions does not affect this conclusion, which is prescribed by the Competition Act.

43. This approach is underlined by the judgment of the Constitutional Court in the Wary Holdings case.[2] In that matter, there was national legislation which

[2] Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and another 2009 (1) SA 337 (CC) para [80].

required the consent of the national government for the subdivision of agricultural land, and there was municipal legislation which required the consent of the municipality for such subdivision. The Constitutional Court held that both authorities must exercise their powers, even though they were dealing with a virtually identical matter, namely, the desirability or permissibility of the subdivision of agricultural land. The two authorities would no doubt approach the matter from a slightly different perspective – the national government from the perspective of national policies on the preservation of agricultural land, and the municipal government from the perspective of land use planning more generally. The subdivision of agricultural land could not be undertaken unless both authorities gave their consent.

44. The Gas Act does not deprive the Competition Commission of its functions in relation to a complaint of excessive pricing with regard to the distribution and sale of gas.

The challenge to the Summons

45. Once the Competition Commission has received a complaint in terms of section 49B of the Competition Act, the Commissioner *"must"* direct an inspector to investigate the complaint. That is a mandatory obligation.

46. An obvious mechanism for conducting such an investigation is to obtain relevant information from the company in question. Section 49A authorises the Commissioner, at any time during an investigation in terms of the Act, to

summon any person who is believed to be able to furnish any information on the subject of the investigation, to deliver or produce to the Commissioner, any book, document or other object specified by the Summons. When Sasol Gas did not provide the information requested, the Commissioner proceeded accordingly.

47. Sasol Gas contended that the Commissioner should not have issued a Summons in this instance, because the matter had already been investigated by NERSA; that the Commissioner failed to have regard to that fact; and that accordingly, the issuing of the Summons was liable to be reviewed and set aside. There are several answers to this submission:

47.1 First, the Commission is obliged to carry out its own investigation. It cannot fold its hands and decline to carry out an investigation simply because the matter is being or has been investigated by another regulator. That would be inconsistent with the Competition Act, and the principle of concurrency. To say this is not to suggest that the two regulatory authorities could not co-operate in their investigations and share the information they collected. They could do so in accordance with a Memorandum of Agreement.

47.2 There was no evidence placed before the Tribunal to suggest that NERSA had investigated the very matters in respect of which the Commissioner had required Sasol Gas to provide information. There was no suggestion that Sasol Gas had provided this information to

NERSA, and that the information could have been procured from NERSA.

47.3 In any event, if Sasol Gas had in fact already provided that information to NERSA, it is difficult to see on what basis it could legitimately have refused to provide that same information to the Commission.

47.4 Conversely, if Sasol Gas had not provided that (apparently relevant, or potentially relevant) information to NERSA, there was every reason for the Commission to require its production for the purpose of its investigation.

48. Sasol Gas did not contend that the Commissioner had issued the Summons for a purpose ulterior to the carrying out of an investigation in terms of the Competition Act.

49. Assuming for the present that the Tribunal has jurisdiction to determine this question, Sasol Gas has not demonstrated that the issuing of the Summons by the Commissioner was invalid, whether in terms of PAJA or the principle of legality.

Discretion

50. The granting of an interdict is generally a discretionary matter.

51. Subsequent to the launching of the Sasol Gas application, the Constitutional Court handed down judgment in the Group Five case.[3] The majority judgment addresses the jurisdiction of this Tribunal.

52. Section 62(2)(a) of the Competition Act provides that the Competition Appeal Court has jurisdiction over whether an action taken or proposed to be taken by the Competition Commission or the Competition Tribunal is within its jurisdiction in terms of the Act. The Constitutional Court held that matters that fall within the scope of section 62(2) fall within the jurisdiction of the Competition Appeal Court (and also the High Court), but not the Tribunal.[4]

53. Sasol Gas contended that this Tribunal has the power to grant interim relief pending the determination of an application to the High Court or the Competition Appeal Court (*"CAC"*) for final relief. At the time when this application was heard, no proceedings had been brought in either of those courts for the setting aside of the decision of the Commissioner to institute the investigation and issue the Summons. Sasol Gas informed the Tribunal that it would bring such proceedings. Subsequently, on 4 April 2023, Sasol Gas applied to the CAC for an order directing that Part B of its application to this Tribunal be transferred to the CAC for its determination. On 5 May 2023 the CAC ordered accordingly.

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[3] Competition Commission of South Africa v Group Five Construction Ltd 2023 (1) BCLR 1 (CC).

[4] Paras 118, 122, 126, 139.

54. Assuming for the moment that the Tribunal has the power to grant such an interim interdict pending a review in the CAC or the High Court, it appears to us that ordinarily, an application for that relief ought more appropriately to be made to the court which is going to determine whether the decision of the Commissioner should be reviewed and set aside. To the extent that we have a discretion in this matter, we decline to exercise it, given that no explanation was provided why the Tribunal (which does not have review jurisdiction) would be the appropriate body to deal with the matter by ordering an interim interdict pending the outcome of the decision by a court which does have review jurisdiction. And in any event, as we have noted, at the time when the Sasol Gas application was heard by the Tribunal, there was not a review application pending in the CAC or the High Court.

55. To the extent that the Tribunal has the power to grant an interim interdict of the kind which is sought by Sasol Gas, it declines to exercise that power in this case.

56. Sasol Gas asked in the alternative that the Tribunal should transfer Part A of its application to the CAC. Sasol Gas contended that the Tribunal has the power to make such an order in terms of section 27(1)(b) of the Act. That subsection empowers the Tribunal to *"adjudicate on any other matter that may, in terms of this Act, be considered by it, and make any order provided for in this Act"*. It was not explained how this creates the power to refer a matter before the Tribunal to the CAC. We decline to make such an order.

THE IGUA-SA APPLICATION

Determining whether there is excessive pricing

57. The Act previously contained a definition of *"excessive price"*. That definition was repealed. However, section 8(3) of the Act provides some guidance in that regard.

58. The parties placed extensive evidence and argument before the Tribunal as to how one is to determine whether there is *"excessive pricing"* in a context where there is not effective competition. Broadly, they took two different starting-points:

    58.1 Sasol Gas contended that the starting-point should be a weighted average of international gas prices. That is the foundation of the method which is used by NERSA, and the prices determined by Sasol Gas.

    58.2 IGUA-SA contended for an alternative method, based primarily on the production costs and acquisition costs in respect of the gas, and the profits which were derived.

59. In the opinion of the Tribunal, what cannot be gainsaid is that the facts in the present matter demonstrate that standing alone, the *"weighted average"* approach, which is based on international gas prices, does not always produce an appropriate outcome for gas prices to be charged to South African customers. NERSA refers to the *"unprecedented"* surge in

international gas prices, and to an international gas price crisis. Whatever the situation may be in "normal" circumstances, the evidence reveals that in the economic circumstances which prevail at the moment, the *"weighted average"* approach, standing alone, produces a result in South Africa which is not supported by anyone. The *"weighted average"* approach, standing alone, yields a maximum gas price of R273.43/GJ for FY 2023, in comparison with the previous price of R68.39/GJ. This very sharp increase is, in part, the result of circumstances in the comparator countries which, at least to a very substantial extent, do not apply in South Africa. The evidence shows that while the "benchmark" price is calculated at R273.43/GJ,

59.1 the attitude of NERSA is that the price should be in the region of R100/GJ.

59.2 The attitude of Sasol itself is that the price should not be the "benchmark" price: It elected to charge a price of R133.34/GJ, in other words, less than half of the price generated by the *"weighted average"* approach.

60. It follows that it is common cause that in the present circumstances, the *"weighted average"* formula, at least standing alone, cannot be relied upon to produce a price which is not excessive.

61. Further, section 8(3) of the Act provides that a person determining whether a price is an excessive price must determine if that price is higher than a competitive price and whether such difference is reasonable, determined by

taking into account all relevant factors, which may include a number of listed factors. The first of the listed factors, in section 8(3)(a), is *"The respondent's price-cost margin, internal rate of return, return on capital or profit history"*. While this does not necessarily mean that a "cost" or "profit" methodology must always be used, it at the least casts doubt on the contention by Sasol Gas that such a method is always impermissible in the context of gas prices. As we explain below, NERSA itself states that the trader's cost of acquiring the gas molecule must provide the *"lower bound"* in determining the price in accordance with its "Rationality Test".

62. Section 8(3) of the Act provides that any person determining whether a price is an excessive price must take into account all relevant factors, which may include the respondent's prices for the goods or services historically, the length of time the prices have been charged at that level, the structural characteristics of the relevant market, including the extent of the respondent's market share, the degree of contestability of the market, barriers to entry, and past or current advantage that is not due to the respondent's own commercial efficiency or investment, such as direct or indirect state support for a firm or firms in the market.

63. In proceedings for interim relief, the Tribunal is effectively obliged to take a somewhat robust attitude to the evidence and submissions, given that a full examination and determination of the merits will be undertaken at the hearing

in which final relief is sought.[5] There is no opportunity for the giving and testing of oral evidence.

The March 2021 NERSA determination

The NERSA Methodology

64. In March 2020, NERSA published a document titled *"Methodology to Approve Maximum Prices of Piped-Gas in South Africa"*. Counsel invited us to have reference to this document, which is a matter of public record. The document *"prescribes the methodology for regulating the maximum prices of piped-gas in the manner prescribed by the Gas Act"*. In paragraph 7 it sets out the *"implementation of the methodology"*. It contains a step-by-step analysis of the calculations which are involved, the last step being to calculate the maximum price accordingly.

65. Paragraph 4 describes the "Rationality Test". It involves two tests:

65.1 determining the "Marginal/actual costs of the gas molecule", on the basis of the trader's actual costs of acquiring the gas molecule; and

65.2 determining "Willingness to Pay – The cost of the next supplier of gas to South Africa". The Japanese price is used for this purpose.

[5] eMedia Investments Proprietary Limited South Africa v MultiChoice Proprietary Limited and Another CAC case no 201/CAC/JUN22 (1 August 2022) para 81.

66. Paragraph 8 is headed *"Implementation of the Rationality Test"*.[6] It states that NERSA will ensure that the maximum price achieves the objectives of the Gas Act, by ensuring the following:

66.1 NERSA will establish the licensee's actual costs of purchasing the gas molecule. This is the "lower bound"; and

66.2 NERSA will establish the Japan LNG price, which is converted to rand. It *"represents the upper bounds of the piped-gas market"*.

67. Paragraph 8 states that the maximum price should be between the lower bounds and the upper bounds of the piped-gas market.

68. This is said to be an objective way of allocating the total surplus between the suppliers of gas and the consumers. It appears that the maximum price of gas is to be determined by calculating the derived benchmark price, and then moderating this by the application of the rationality tests which are set out in the Methodology.

The NERSA March 2021 determination

69. As noted above, on 31 March 2021 NERSA made a number of determinations of the maximum price of gas. It referred to the *"benchmark price"* and the *"trading cost"*, and by adding these two amounts arrived at the *"maximum price"*.

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[6] The "Rationality Tests" are explained in para 4.

70. With respect to the period 1 July 2022 – 30 June 2023, NERSA determined that *"the 12-month average prices of the period 01 July 2021 to 30 June 2022 will*[7] *be used. For both adjustments, the NBP*[8] *that is as prescribed in the methodology is published with a 3-month lag, and this will also be the case in the adjustments"*.

How Sasol Gas understood the NERSA March 2021 determination

71. Sasol Gas understood the March 2021 determination as entitling it to charge a price which was derived by adjusting the price applicable in the previous period by reference to the change in the derived *"benchmark price"*, which is based on the comparative benchmarks. In its answering affidavit, Sasol Gas said the following:

> *55.2 Applying the adjustment method approved by NERSA in the Maximum Price Decision, the calculation yielded a maximum gas price of R273.43/GJ for FY 2023.*
>
> *55.3 Recognising the potential negative impact of such an increase on its customers and having regard to the rationality test in the Methodology, SASOL Gas elected not to apply the price of R273.43/GJ permitted by the Maximum Price Decision, but*

[7] Emphasis added.
[8] National Balancing Point.

rather to apply a price that was less than half of NERSA's benchmark index of international gas prices ….[9]

55.4 At the end of July 2022:

55.4.1 Sasol Gas conveyed its intention to increase the price of gas to its customers, effective from 1 August 2022, in accordance with NERSA's methodology for doing so.

55.4.2 In the same letter, Sasol Gas conveyed its intention to charge the substantially lower price of R133.34/GJ.

72. SASOL Gas issued invoices to its customers accordingly.

73. As a result of the outcry which followed this, Sasol Gas informed its customers that it would not implement the price of R133.34/GJ, but would instead hold the price at R68.39/GJ, while it engaged with NERSA *"with a view to determine an appropriate process to determine an appropriate maximum gas price for FY 2023. The process of engagement with NERSA remains ongoing"*.[10]

74. Sasol Gas contends that NERSA had, through its Maximum Pricing Decision, authorised Sasol Gas to charge a price of up to a maximum of R273.43/GJ (derived by an updating and adjustment of the benchmark figure). It is not

[9] Emphasis added.

[10] Answering affidavit: para 55.6.

for the Tribunal to determine whether the Sasol Gas interpretation of NERSA's Maximum Pricing Decision is correct.

The likely outcome of the present NERSA – Sasol Gas process

75. On the evidence before the Tribunal, including the evidence of Sasol Gas, it is overwhelmingly probable that in the absence of a legal prohibition, there will be an increase in the gas price above the current level. What is uncertain is what the extent of that price increase will be:

75.1 Sasol Gas has taken the position that it is entitled to increase the price to up to a maximum of R273.43/GJ. It will not fully exercise that entitlement, but it will increase the price substantially. Its preferred price is R133.34/GJ.

75.2 Sasol Gas anticipates that its engagement with NERSA will result in a *"supplemental"* maximum price application being made by it for the approval of a maximum price for FY 2023.

75.3 Sasol Gas states that from the views expressed by NERSA, the maximum price is *"likely to be less than the R133.34/GJ described above"*.[11]

75.4 Sasol Gas states that NERSA publicly indicated that it was likely to approve a maximum price in the region of R100/GJ for FY 2023.

[11] Sasol Gas answering affidavit: para 55.6.

76. However, the content of the discussions between NERSA and Sasol Gas is obscure, as no evidence was placed before the Tribunal in that regard.

THE REQUIREMENTS FOR AN INTERIM INTERDICT

77. Section 49C(2)(b) of the Competition Act provides that the Tribunal may grant interim relief *"if it is reasonable and just to do so"*, having regard to specified factors. One of them is *"the need to prevent serious or irreparable damage to the applicant"*.[12]

78. An application for an interim interdict requires a court to consider four factors:

78.1 a *prima facie* right, though open to some doubt;

78.2 a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted: in the case of the Tribunal, the test in section 49C (2)(b)(ii) is the need to prevent "serious or irreparable damage" to the applicant;

78.3 a balance of convenience in favour of the granting of the interim relief; and

78.4 the absence of any other satisfactory remedy.

[12] Section 49C(2)(b)(ii).

***Prima facie* right**

79. IGUA-SA and its Members have a right not to be subjected to excessive pricing in circumstances where there is not effective competition.

80. As we have noted, there was extensive dispute between the parties' experts as to how one should determine whether there has been excessive pricing.

81. The difficulty is that the NERSA methodology is based on an international benchmarking system which, on its face, appears to render an entirely inappropriate price for South Africa in present economic circumstances. Sasol Gas contends that it is entitled to charge a price up to the maximum price determined in terms of that formula, in terms of the March 2021 Maximum Pricing Decision of NERSA. But both Sasol Gas and NERSA accept that this price would not be appropriate.

82. On the evidence before the Tribunal, it is not clear how, if a *"supplemental"* application is made to NERSA, and assuming that NERSA has the power to make such a *"supplemental"* decision, it will reach that decision. It is said that NERSA is *"likely"* to approve a price at around R100/GJ, but there is no indication as to how that number has been or will be arrived at. The expert witnesses for IGUA-SA contended that in the present circumstances a cost-based methodology should be used, and that a price in that range will be excessive. The expert witnesses for Sasol Gas contended that a cost-based methodology is not appropriate because that is not how gas prices are determined in any competitive market in the world, but that if a cost-based

methodology is used, a price in that range ([redacted]) would be reasonable if regard is had to international gross margins.

83. The appropriate benchmarks for a competitive gas price in South Africa in terms of the Competition Act can only be determined on the basis of factual and expert evidence when the merits are considered at trial stage. There is a dispute of fact in that regard. It cannot be resolved on the papers. In interim relief proceedings the Tribunal must take a robust approach, and must decide if there is *prima facie*, an excessive price.

84. On the well-established test in Webster v Mitchell,[13] in an application for interim relief the approach is to take the facts set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant, it cannot succeed in obtaining interim relief.

85. In our opinion, on the application of the test in Webster v Mitchell to the disputed facts, IGUA-SA has shown a *prima facie* right, in the sense of the

[13] Webster v Mitchell 1948 (1) SA 1186 (W) at 1189 as qualified in Gool v Minister of Justice and Another 1955 (2) SA 682 (C) at 688E and approved in Simon N.O. v Air Operations of Europe 1999 (1) SA 217 (SCA) at 228G-H.

right not to be subjected to an excessive price. An excessive price is by its nature ordinarily to the detriment of consumers or customers.[14]

86. On the evidence before the Tribunal, and applying that test, IGUA-SA has established a *prima facie* right.

Well-grounded apprehension of serious or irreparable harm/damage

87. IGUA-SA and its members do not know and cannot know what the Sasol Gas price increase will be. However, it is clear that they have a reasonable apprehension that the price increase will not be less than of the order of about 50%.

88. IGUA-SA put up substantial evidence of the serious or irreparable damage which its members will suffer if the price is increased to R133.34/GJ, which is the price which Sasol Gas initially fixed and announced. There is no effective challenge to this evidence.

89. Sasol Gas indicated that it anticipates a price increase to the region of R100/GJ. It is reasonable to conclude for the purposes of an interim interdict,

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[14] Competition Act, section 8(1)(a); Harmony Gold Mining Company Ltd & Another and Mittal Steel South Africa Ltd and Another (13/CR/FEB04) [2007] ZACT 21 para 71; Mittal Steel South Africa Ltd and Others v Harmony Gold Mining Company Ltd and Another (70/CAC/Apr07) [2009] ZACAC 1 para 56.

and on the basis of the evidence before the Tribunal, that this price too would cause serious or irreparable damage to IGUA-SA and its Members.

90. Sasol Gas stated at the hearing that it will give IGUA-SA and its members reasonable notice of the price increase, to enable them to take the appropriate steps to implement it. However, it did not specify a notice period, and did not undertake to give IGUA-SA and its members notice of a kind which would enable them to challenge the lawfulness of the price, if so advised.

91. Sasol Gas points out that IGUA-SA seeks an interim interdict preventing any increase on the existing price of R68.39/GJ. It further points out that IGUA-SA has produced no evidence that an increase of (for example) R1.00/GJ or R10.00/GJ would cause serious or irreparable damage to the members of IGUA-SA. Its evidence was focused on the price initially adopted by Sasol Gas, namely R133.34/GJ.

92. In our opinion, this is an unrealistic and impractical approach to the matter. The evidence introduced by Sasol Gas is that the price which is ultimately fixed will likely be less than R133.34/GJ, and will likely be of the order of R100/GJ. A litigant cannot realistically be expected to produce evidence of the harm which will be caused at every possible price in the range between R68.39/GJ and R133.34/GJ. Particularly in proceedings for interim relief, where a robust approach is required, it is necessary to take a practical and business-like approach to the matter. The inability of IGUA-SA to predict the price which NERSA will determine, and Sasol Gas will charge, is not to be

laid at its door. On the evidence, it can reasonably be apprehended that an increase to the region of R100/GJ (the price which, Sasol Gas says, NERSA has indicated it would likely accept) would cause serious or irreparable damage to IGUA-SA and its members.

93. Accordingly, IGUA-SA has demonstrated that it and its members reasonably apprehend that:

93.1 the price will be increased;

93.2 the increase is likely to be to a level which will cause them serious or irreparable damage.

94. For the reasons set out above, IGUA-SA has established a well-grounded apprehension of serious or irreparable harm if interim relief is not granted and the ultimate relief is eventually granted.

95. It is however so that IGUA-SA and its members have not produced evidence that they will suffer "serious or irreparable damage" at <u>every</u> price which is above R68.39/GJ. It seems unlikely that "serious or irreparable damage" would result from a very limited price increase. And "serious or irreparable damage" is the test in section 49C(2)(b)(ii) of the Act for interim relief. The existence of "detriment to consumers or customers" is not sufficient. It will often not be possible to craft interim relief with such precision that there is no risk of an excess of protection. However, in our opinion a tribunal should attempt to avoid this if that can be achieved without doing damage to the

purpose of interim relief. We address this below when we come to the question of remedy.

Balance of convenience

96. As Sasol Gas points out in its answering affidavit, the balance of convenience requirement is inextricably linked to the prospects of success that IGUA-SA has in the pending proceedings, namely the investigation by the Commission. Sasol Gas asserts in this regard that the investigation seeks to usurp the powers of NERSA and bypass its jurisdiction. It asserts further that IGUA-SA has no right in law to interdict the charging of a price which has already been determined by NERSA to be lawful. It says therefore that if the jurisdictional point is decided in favour of Sasol Gas, then interim relief should not be ordered.

97. For the reasons set out above, the Tribunal concludes that the jurisdictional challenge is not well-founded. The decision by NERSA does not confer on Sasol Gas an unqualified right to charge the maximum price approved by NERSA. That right is qualified by the right of IGUA-SA and its members not to be subjected to excessive pricing in terms of the Competition Act. And in any event, it seems that NERSA is wishing to step away from the maximum price which it previously determined.

98. In oral argument, counsel for Sasol Gas contended that an interim interdict should not be granted, because IGUA-SA has not made a tender to refund Sasol Gas if the interim interdict is granted, and final relief is ultimately not

granted. As we understand it, this is said to bear on the balance of convenience.

99. It is not clear what would constitute the granting of final relief in this matter. The interim relief is sought pending the conclusion of the investigation by the Commission into the allegedly prohibited practice. The interim relief is not sought pending a determination in favour of IGUA-SA. What IGUA-SA seeks is that the complaint be determined, and that there be no increase until this determination has been made, whether favourable to IGUA-SA or otherwise.

100. It is reasonable to anticipate that the Commission will (unless interdicted from doing so) conclude its investigation into the alleged prohibited practice of excessive pricing. That being so, in the view of the Tribunal, it would not be just and equitable to require IGUA-SA to make a tender of any loss of potential income while the Commission is undertaking the investigation which, the evidence shows, should be undertaken. It seems highly probable that the maximum permissible price derived from the benchmark would constitute excessive pricing – Sasol Gas does not seek to defend it – and it appears that NERSA considers that the price which was introduced by Sasol Gas (R133.34/GJ) would also be too high in terms of the NERSA pricing criteria.

101. The balance of convenience test is not simply a matter of weighing the convenience of each of the litigating parties. In the Business Connexion case,[15] Unterhalter AJA held as follows on behalf of the Court:

> *Unlike disputes in private law which, for the most part, concern the rights enjoyed and duties owed by individuals to one another, prohibited practices in chapter 2 concern the conduct of firms and their effect on competition in the market. Even those practices that are not defined by reference to their effects are nevertheless rendered unlawful by reason of their presumptive harmful effects upon competition. As a result, interim relief granted by the Tribunal has effects upon the state of competition in the market. Second, when the Tribunal grants an interim relief order, it is not a status quo order. The order requires that the respondent firm desist from the prohibited practice (in whole or in part).*

102. Where the complaint is of excessive pricing, the consequence of the alleged prohibited practice is likely not experienced only by the litigants: in this instance, it is likely also experienced by the public who use gas. The prohibited practice is charging an excessive price *"to the detriment of consumers or customers"*. Consumers must also be considered in assessing the balance of convenience.

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[15] Business Connexion (Pty) Ltd v Vexall (Pty) Ltd and Another (182/CAC/Mar20) [2020] ZACAC 4; [2020] 2 CPLR 490 (CAC) para [17].

103. In the view of the Tribunal, the balance of convenience favours the granting of relief.

Alternative remedy

104. In its answering affidavit, Sasol Gas states that IGUA-SA is the applicant in a pending High Court review of the NERSA decision, and that IGUA-SA declined to seek interim relief pending the finalisation of that review. Sasol Gas contends that IGUA-SA has therefore not pursued the alternative remedy which it had.

105. This application is however not brought on the same basis as the pending High Court review. It is brought on the basis of an allegation of excessive pricing, which falls outside the jurisdiction of the High Court. The availability of an interim interdict in the review application, which arises from a different cause of action, does not give rise to an alternative remedy for preventing a breach of the right not to be subjected to excessive pricing.

REMEDY

106. In our opinion, IGUA-SA and its members are entitled to protection while the Commission is undertaking its investigation. The question is what form that protection should take.

107. The protection sought by IGUA-SA in the notice of motion is an interim restraint which will last as long as it takes for the Competition Commission to

conclude its investigation. Counsel for IGUA-SA accepted that this must be subject to the time limitations set out in ss 49C(4) and (5) of the Act – namely, a maximum of six months after the date of issue of the interim order if the investigation has not been concluded by then, and a further six months if authorised by the Tribunal on good cause shown.

108. The difficulty that IGUA-SA faces is that while it has been demonstrated that it and its members reasonably apprehend that there will be a substantial increase in the price of gas, and that such an increase will likely cause them serious or irreparable damage, they do not know what the amount of the increase will be. They are thus driven to seeking an interim interdict in respect of <u>any</u> increase in the price. But it is not possible to demonstrate what the impact will be of every possible increase. It is not possible to say that every possible increase would cause serious or irreparable damage.

109. The Tribunal is empowered to make an interim order if it is *"reasonable and just"* to do so: section 49C(2)(b). It appears to us that it would be reasonable and just to grant an interim interdict which provides that during the term of the interdict, Sasol Gas will not be entitled to increase the price unless it has given IGUA-SA at least two months' written notice of its intention to do so.

110. Such an order will provide interim protection to IGUA-SA and its members. If Sasol Gas decides to implement an increase, in accordance with a decision by NERSA on the basis of its "supplemental" application, it may do so if it gives two months' written notice of that intention. That notice will have to indicate the amount of the intended increase. This will enable IGUA-SA, if it

contends that the intended new price would constitute excessive pricing and cause serious or irreparable damage, to take such steps as it is advised to prevent the price being implemented. If the route it chooses is proceedings before this Tribunal, the Tribunal will be able to consider the matter with knowledge of what actual price is intended, and possibly what the views of NERSA are in that regard, and its reasons for those views. This would enable the Tribunal to deal with the matter without having to speculate as to what a price increase will be.

111. The Tribunal considers that this would be a reasonable and just order under the circumstances.

COSTS

112. Section 57(1) of the Act provides that a party participating in a hearing must bear its own costs. Section 57(2) provides that the Tribunal has the power to award costs against an unsuccessful party in a complaint referral. In the *BCX* judgment, the CAC stated that the Tribunal does not have the power to order costs outside of the scheme of the Act.

113. Since this is an application for interim relief and not a complaint referral, we do not believe we have any power to order costs in these proceedings. Further, and in any event, we do not regard it as appropriate to award costs

in this case where the merits of the complaint have yet to be finally determined.[16]

114. The Tribunal therefore orders as follows:

(a) Pending the conclusion by the Competition Commission of its investigation into the alleged prohibited practice of charging an excessive price to the detriment of consumers or customers, Sasol Gas is interdicted and restrained from increasing the gas price to a price above R68.39/GJ, unless it has first given the applicant at least two months' written notice of its intention to do so. Such notice must specify the price which Sasol Gas intends to charge its customers, and whether that price has been approved by NERSA, and if so, when it was so approved.

(b) This interdict will endure to the earlier of the dates referred to in section 49C(4) of the Competition Act.

(c) Each party must bear its own costs.

Geoff Budlender

Advocate Geoff Budlender SC
Mr Anton Roskam (Concurring)

[16] *BCX, supra*, para 54.

M Mazwai

115. I have read the decisions of the majority of the Tribunal's panel in both matters. I concur with the decisions. However, I respectfully disagree on a limited issue in respect of IGUA-SA's interim relief application (case number: IR095Aug22), relating to the portion of the remedy which interdicts and restrains Sasol Gas from increasing the gas price to above R68.39/GJ, unless it has first given the applicant at least two months' written notice of its intention to do so.

116. The purpose of the notice period contained in the remedy, as I understand it, is to give IGUA-SA, an opportunity to challenge any increased new price above the current level (as intended by Sasol Gas according to its own evidence), and to take steps to prevent the new price from being implemented, which steps may include approaching the Tribunal with a further application for interim relief.

117. The majority accepts that an increase in the region of R100/GJ would cause serious and irreparable harm. It follows from this that there would be serious and irreparable harm at R133/GJ. According to the majority's decision, it seems unlikely that "serious or irreparable damage" would result from a very limited price increase to the current price of R68/GJ. Accordingly, the majority take the view that the two months' notice will enable IGUA-SA to bring a case for interim relief based on a specified future price increase. The Tribunal would then be in a position to determine whether there would, *prima facie*, be serious or irreparable damage caused by that specified price increase.

118. I disagree with this approach. In my view, it is not reasonable and just to require IGUA-SA to come before this Tribunal to seek interim relief again, when the Tribunal has determined in this case that there is a basis for granting interim relief. IGUA-SA has in my view shown a *prima facie* right not to be subjected to an excessive price and any further price increase.

119. This is consistent with the CAC's approach in *eMedia*,[17] where the CAC stated that when considering interim relief applications, the Tribunal's assessment is only at a *prima facie* level and there is no time to delve too deeply into serious or irreparable harm in an interim relief application. The Tribunal must consider whether there is a *prima facie* right at the interim level.

120. The Tribunal in *Govchat*[18] recognised that the Tribunal must grant an order that is reasonable and just in the circumstances.[19] In *Nedschroef*,[20] the Tribunal held that:

> "*…the threshold requirement [is] that the granting of the order is 'reasonable and just' … an applicant may not make out a strong case on all three factors, but the Tribunal may nevertheless consider an order for interim relief is nevertheless reasonable and just.*"

121. The Tribunal concluded:

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[17] eMedia Investments Proprietary Limited South Africa v Multichoice Proprietary Limited and Another (201/CAC/JUN22) [2022] ZACAC 9; [2022] 2 CPLR 23 (CAC) (1 August 2022), par 93.

[18] GovChat (Pty) Ltd and Hashtag Letstalk (Pty) Ltd v Facebook, Inc and Others (IR165Nov20).

[19] Supra, para 160.

[20] Nedschroef Johannesburg (Pty) Ltd and Teamcor Ltd and Others Case No: 95/IR/Oct05.

"… whatever weaknesses there are in the applicant's case in proving irreparable harm to itself, these are balanced by the strength of its case on the evidence of the prohibited practice and the fact that it has demonstrated a prima facie harm to competition."[21]

122. Therefore, even if there is no strong evidence of irreparable harm, the Tribunal may in its discretion nevertheless issue an order that is reasonable and just. In determining whether it is reasonable and just to grant interim relief, the Tribunal must follow a transformative constitutional and context-sensitive approach.[22]

123. The undisputed evidence is that piped gas is an essential input for IGUA-SA members as large industrial users of gas in South Africa. According to the evidence presented to the Tribunal by IGUA-SA members, the cost of gas accounts for between [redacted] of their respective costs[23] and according to NERSA, gas comprises between 10% to 30% of IGUA-SA members' input costs.[24]

124. This means that gas comprises a significant portion of the costs incurred by IGUA-SA members. In this context, any increase to the current price of R68/GJ is likely to adversely impact on the profit margins of IGUA-SA members and will not only affect IGUA-SA members and their employees, but also their customers.

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[21] Supra, para 54.
[22] eMedia Investments, supra, para 84.
[23] Trial Bundle, Supporting affidavits, p.62, para 7; p.72, para 5; and p.88, para 5.
[24] Founding Affidavit, annexure JWH11, Trial Bundle, p.135, para 101.

125. IGUA-SA alleges that the price of R68/GJ charged by Sasol Gas is already excessive.[25] Further, that any increase above the R68/GJ will cause even more harm - *"the adverse consequences will be even more extreme."*[26] I am satisfied in the context of this case and having regard to the factors set out in section 8(3) of the Competition Act, that there is *prima facie* evidence that Sasol Gas' current pricing of R68/GJ is excessive.

126. In terms of section 8(3) of the Competition Act, any person when determining whether a price is an excessive price must take into account all the relevant factors, which in addition to the factors referred to in the majority's decision, may include *inter alia* the structural characteristics of the relevant market including the extent of the respondent's market share, historic pricing and barriers to entry.

127. It is common cause that Sasol Gas is the only upstream importer of gas and a monopoly supplier of gas traders in South Africa. Further, Sasol Gas was given a "decade of grace" from 2004 to 2014, during which IGUA-SA alleges Sasol Gas was unconstrained in its pricing of piped gas. IGUA-SA members also alleged that there are significant barriers to entry in the market for piped gas. Sasol Gas' monopoly position and the high barriers to entry are undisputed.

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[25] Founding Affidavit, Trial Bundle, p. 12, para 13.
[26] Founding Affidavit, Trial Bundle, p. 47, para 145, p.49, para 148.

128. Given *inter alia* the uncontested evidence of the importance of gas as an input to IGUA-SA members, I am of the view that there is evidence in the context of this case, that any increase (even a limited one) to the price that Sasol Gas is currently charging is likely to harm customers and consumers. In my view, it is sufficient that IGUA-SA has put forward *prima facie* evidence of an excessive price at R68/GJ, for the purposes of granting this interim relief application. While the evidence on irreparable harm may not be strong, it is, in my view, reasonable and just to grant interim relief given that IGUA-SA has shown *prima facie* evidence of a prohibited practice.

129. Regarding the two months' written notice contained in the remedy, the CAC in *Business Connexion*[27] recognised that the Tribunal is empowered to regulate how competition is to take place in the market for a six or twelve month period while the Commission investigates the complaint. I am of the view that there is no reason in this case to depart from or shorten the six-months statutory time period in terms of section 49C(4) of the Competition Act when there is evidence of a *prima facie* prohibited practice at an interim level.

130. Further, this is not final relief. The Tribunal has the regulatory competence to decide whether the state of competition in the market must endure for six months.[28] If after the six months, IGUA-SA still requires interim relief, it may apply to the Tribunal for an extension for a further period not exceeding six

[27] Business Connexion (Pty) Ltd. v Vexall (Pty) Ltd. and another, Case Number: 182/CAC/Mar20.
[28] Supra, para 18

months in terms of section 49C(5) of the Act. Sasol Gas would then be entitled to oppose such application.

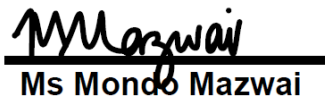
131. There is no evidence that Sasol Gas will suffer any prejudice if interim relief is granted for a period of six months. Sasol Gas has not provided the Tribunal with sufficient reasons as to why it cannot continue charging the R68/GJ for the interim relief period.

132. Even though Sasol Gas disputes that there is excessive pricing, this is not something that the Tribunal can determine without the benefit of the Commission's full investigation. The Commission must be given the time to investigate the allegation that R68/GJ is excessive. It would, in my respectful view, not serve any purpose for the Tribunal to consider another interim relief application before the Commission's investigation is completed.

133. Given the above, I am of the view that the two months' notice will not provide effective relief to IGUA-SA. It is highly likely to result in the parties returning to the Tribunal for further relief, additional costs being incurred and resources used, including by the Tribunal.

134. It also does not seem reasonable and just to ask IGUA-SA to lodge another application to Sasol Gas' intended future price increase, irrespective of how much that increase is by, when IGUA-SA argues that R68/GJ is excessive and harming its members, given the importance to them of gas as an input and Sasol Gas' undisputed monopoly position in the market. This is the basis of their complaint to the Commission.

135. In the circumstances, an appropriate order would be to grant the interim relief application interdicting and restraining Sasol Gas from increasing the gas price to above R68.39/GJ for a period of six months, or pending conclusion by the Commission of its investigation into the alleged prohibited practice by Sasol Gas, whichever occurs first.



Ms Mondo Mazwai

Tribunal Case Managers:	Matshidiso Tseki, Baneng Naape, Sinethemba Mbeki, Leila Raffee
For Sasol Gas:	Adv Frank Snyckers SC assisted by Adv Mkhululi Stubbs, on instruction by Bowmans (OTH110SEP22) Adv Alfred Cockrell SC assisted by Adv Adrian Friedman, on instruction by Bowmans (IRO95AUG22)
For the Commission:	Adv Tembeka Ngcukaitobi SC assisted by Adv Lerato Zikalala and Adv Shannon Quinn, on instruction by Haasbroek & Boezaart Attorneys
For IGUA-SA:	Adv Kate Hofmeyr SC assisted by Adv JJ Meiring and Adv Lebogang Phaladi, on instruction by Norton Rose Fulbright South Africa

ORDER

Having heard the Parties in the above matters, the Competition Tribunal orders as follows:

IR095AUG22:

1. Pending the conclusion by the Competition Commission of its investigation into the alleged prohibited practice of charging an excessive price to the detriment of consumers or customers, Sasol Gas is interdicted and restrained from increasing the gas price to a price above R68.39/GJ, unless it has first given the applicant at least two months' written notice of its intention to do so. Such notice must specify the price which Sasol Gas intends to charge its customers, and whether that price has been approved by NERSA, and if so, when it was so approved.

2. This interdict will endure to the earlier of the dates referred to in section 49C(4) of the Competition Act.

3. Each party must bear its own costs.

OTH110SEP22:

1. The application is dismissed.
2. No order as to costs.

Signed by:Geoff Budlender
Signed at:2023-05-12 10:17:43 +02:00
Reason:Witnessing Geoff Budlender

Geoff Budlender

Advocate Geoff Budlender SC

12 May 2023
Date