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Date of release: 18 May 2023

The following media release serves as an explanatory note to assist the media in reporting this case and is not binding on the Competition Tribunal or any member of the Tribunal.

Competition Tribunal interdicts Sasol Gas from increasing its gas prices for six months

The Competition Tribunal (Tribunal) has granted an interim relief application brought by the Industrial Gas Users' Association of Southern Africa (IGUA-SA), interdicting Sasol Gas from increasing the price of piped natural gas above R68.39/GJ for the next six months. Natural gas is an essential input for IGUA-SA's members which include large industrial users of gas in South Africa.

In August 2022, Sasol Gas notified its customers that it intended to increase its price for natural gas to R133.34/GJ. Following an outcry by customers, Sasol elected not to implement a price increase pending further discussions with the sector regulator, the National Energy Regulator of South Africa (NERSA).

IGUA-SA then lodged a complaint with the Competition Commission (Commission), alleging that Sasol is abusing its dominant position in the market by charging an excessive price for gas to the detriment of consumers and customers.

IGUA-SA thereafter approached the Tribunal for interim relief interdicting Sasol from increasing its current price of R68.00/GJ for six months or pending the conclusion of the Commission's investigation into its excessive pricing complaint against Sasol.

In proceedings before the Tribunal, Sasol Gas challenged the competition authorities' jurisdiction to hear the application, arguing that its pricing fell within the maximum price determined by NERSA. It was therefore beyond the power of the competition authorities to determine whether Sasol Gas had engaged in excessive pricing. On this point, the Tribunal has concluded that the Competition Act and the Gas Act create a system of concurrent jurisdiction. The Tribunal proceeded to determine whether IGUA-SA had established a basis for interim relief.

The Tribunal concluded that IGUA-SA had shown *prima facie* that an increase to Sasol Gas' price for natural gas would result in an excessive price. The Tribunal therefore effectively placed a moratorium on Sasol Gas' increase on the price of natural gas for a period of six months or pending the conclusion of the Commission's investigation (whichever occurs first). Within the six-month period, Sasol Gas may not increase its natural gas price above R68.39/GJ, unless it first gives IGUA-SA 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, whether that price has been approved by NERSA and, if so, when it was approved.

The Tribunal simultaneously heard an application by Sasol, in terms of which Sasol sought an order suspending (suspension application) the legal validity and effect of a summons issued to it by the Commission, during its investigation of IGUA-SA's complaint.

The suspension application is related to a review application which Sasol has lodged in the Competition Appeal Court (CAC) in which it seeks to set aside the Commission's decision to investigate the IGUA-SA complaint and issue summons. The Tribunal declined to grant the suspension application following a Constitutional Court decision in the *Group 5* matter, which confirmed that only the CAC and High Court have jurisdiction over actions taken or proposed to be taken by the Commission. The CAC will therefore decide on the review application in terms of which Sasol is challenging the Commission's power to investigate the complaint and issue summons.

A public version of the Tribunal's reasons for its decision will be available once any claimed confidential information in the reasons has been finalised.



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