

Hypothetical case study

Emporium Holdings “Emporium” was established as a wholly-owned private company in the year 2000. The company was established after the first innovation in Africa to produce microsil from ferrosilicon (FeSi). Microsil is produced as a by-product of FeSi production. Initially discharged in the atmosphere as a pollutant, the innovation by Emporium resulted in the collection of microsil as a powder. Microsil is used as a binder in the production of refractory products. The downstream refractory market is very competitive with a large number of refractory producers. Microsil accounts for approximately 30% of the costs of refractory products. Demand for microsil has significantly increased over time and there is no other substitute binder for microsil in the production of refractory products.

Emporium has secured infinite rights to all FeSi mines in South Africa and is therefore the sole producer of microsil in South Africa. It is not feasible to import microsil due to its toxic nature and cross border embargo. Emporium obtained the rights to the FeSi mines at a very low price by which it pays a very small royalty to FeSi producers.

In 2012, Emporium raised the prices of microsil significantly. Since then prices of microsil have been increasing relatively more than the pre-2012 period.

The Complaint

In 2016, the Competition Commission (“Commission”) received a complaint from the Refractories that Emporium was excessively pricing microsil to customers in South Africa. Refractories alleged that there is no reasonable relationship between costs incurred to produce and supply microsil, and the final microsil prices that Emporium charges to Refractories. At the time the complaint was received, Emporium’s alleged conduct was considered to be ongoing.

During the investigations the Commission team gathered the information presented in the tables below.

Table 1: Sales and price information

	2012	2013	2014	2015	2016	2017
Sales volume (million tons)	1,72	2,07	2,12	2,16	1,99	2,15
Revenue figures (R millions)	90.1	130.3	162.9	201.6	174.4	240.7
Weighted average prices (R/T)	52,44	62,95	76,15	87,66	87,67	96,31

Note: data relate solely to microsil product

Table 2: Costs and Financial information

	2012	2013	2014	2015	2016	2017
Cost of sales (R/T)	20,28	24,06	28,35	31,97	33,24	37,20
Total operating cost (FC) (million Rand)	2,2	1,2	2,6	3,4	3,7	5,9
Taxation (million Rand)	25.26	36.49	45.63	56.45	48.85	67.42
Capital invested on tangible assets (Replacement) (million Rand)	94,01	97,35	98,93	101,30	103,62	104,91

Goodwill (million Rand)	21,40	22,50	23,60	24,70	25,80	27,00
ROCE (Return on Capital Employed)	0,20	0,19	0,17	0,14	0,15	0,15
TIRR (Truncated Internal Rate of Return)	0,19	0,18	0,15	0,16	0,14	0,13
WACC (Weighted Average Cost of Capital)	0,15	0,15	0,13	0,12	0,11	0,09

Note: data relate solely to microsil product

The Commission also gathered that the production of microsil is energy intensive. With the help of the South African government, Emporium managed to procure electricity at prices below the market price. Table 3 below shows the actual cost of electricity and the cost at market price.

Table 3: Actual cost of electricity and the cost at market price (R/T)

	2012	2013	2014	2015	2016	2017
Actual costs incurred	1.50	1.60	1.80	1.90	2.20	2.30
Costs at market price	2.00	2.20	2.30	2.60	3.00	3.30

Note: Actual costs incurred are included in total operating costs

Emporium charges the following weighted average prices for microsil in the respective countries that also produce microsil. In these countries there are at least 3-4 different companies selling microsil. Emporium exports to all countries listed below with more than a third of its production of Microsil to Russia. Further an industry expert has advised that Brazil has similar supply and demand factors to South Africa.

Table 4: Weighted average prices of microsil in the respective countries (R/T)

	Botswana	Ghana	France	Russia	India	China	Brazil	USA
2012	45,25	40,25	40,54	38,25	44,54	35,25	42,54	42,54
2013	54,35	48,35	48,65	46,85	51,65	42,35	46,65	53,65
2014	68,75	60,75	58,65	58,75	62,65	52,75	59,65	61,65
2015	71,41	64,41	70,96	62,41	74,96	57,41	68,96	76,96
2016	79,55	73,45	74,17	70,35	80,37	67,35	76,37	78,17
2017	81,65	76,45	84,11	73,25	90,51	71,25	89,01	85,61

Questions

1. Based on the information provided assess whether or not Emporium charges excessive prices for microsil in contravention of the competition act?
2. Discuss the appropriate remedies that you would recommend if Emporium was found to be charging excessive prices for microsil in contravention of the competition act.]