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Import Parity Pricing and Competition Policy

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Commissioner

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When is Import Parity Pricing (IPP) anticompetitive?



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- Pricing at IPP is not, in itself, a contravention of the Comp Act
- In certain circumstances, IPP represents the exercise of market power:
 - *Pricing maintained by ‘shorting’ the local market – exporting/reducing supply to create artificial situation where import price sets the local price*
 - *Customers charged price as if had to import the product, when this not necessary*
 - *Pricing is not reflective of local costs and what would result from local competition*
- Link to beneficiation? Local customers are being handicapped – advantages of those controlling minerals and production of derivative products are not flowing through to competitive prices for downstream industry
- Cases where an IPP was found/alleged to be anticompetitive
 - *Excessive pricing, where IPP is the ceiling to monopoly power*
 - ArcelorMittal - CT found prices for flat steel excessive, CAC sent case back to CT for further consideration, parties (private) settled out of court
 - Sasol Chemical Industries (discussed later)
 - *Cartels - IPP is often a readily identifiable pricing point around which firms collude, such as in the reinforcing steel bar cartel*

Competition Authorities' role



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- SA's skewed economy, result of historic state support for strategic capital-intensive industries, exemplified by Sasol and ArcelorMittal
- Now entrenched dominant firms, can continue to extract monopoly rents from local customers, who are downstream, generally more labour-intensive, industries
- Competition Act mandates CC to address these issues, reflected in preamble & purpose
 - *Preamble recognises that 'apartheid and other discriminatory laws and practices of the past resulting in excessive concentrations of ownership and control within the national economy, inadequate restraints against anti-competitive trade practices and unjust restrictions on full and free participation in the economy by all South Africans'*
 - *Further that 'an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focussed on development, will benefit all South Africans'*
- The purpose and objectives of the Act include:
 - *to promote the efficiency, adaptability and development of the economy*
 - *to provide consumers with competitive prices and product choices*
 - *create greater capability and an environment for South Africans to compete effectively in international markets*

CC v Sasol Chemical Industries: The issues



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- SCI had very low costs of production, one of the lowest cost producers in the world
(main input cost around 25-30% lower than typical producers in e.g. Europe)
- Produces large volumes for the export market as well as the local market, but charged local customers at IPP *(incl notional transport costs)*
- SCI's low costs derive from the abundance of feedstock propylene which is produced as a by-product from the synthetic fuels process
- 1995 study for government's Liquid Fuels Industry Taskforce found polypropylene was sold to local buyers in line with export prices, thus benefits for Sasol of fuel regulation being passed on, where appropriate, to downstream industries
- But, nothing had committed Sasol and its SCI business to continue pricing on this basis; prices changed to IPP in early 2000s
- Competition law then seen as answer; CC referred case on propylene and polypropylene in 2010, hearing in 2013 and Tribunal ruling in 2014 that prices were excessive and that now prices must not discriminate against local customers

CC v Sasol Chemical Industries: Standard applied and ruling



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- Price charged by a dominant firm is excessive if it bears no reasonable relation to the economic value of the good or service and is higher than this value to the detriment of consumers
- The price can be assessed relative to prices which *would* prevail under conditions of normal and effective competition
- CT assessed prices against costs, and international comparisons, and found SCI guilty of excessive pricing of propylene and polypropylene to the detriment of consumers
- Consumers were plastic convertors, CT emphasised missed opportunities for innovation and development for the domestic manufacture of downstream plastic goods as a result of SCI's pricing
- Imposed fine of R534 million and ordered SCI to price such that the location of the buyer would not influence the price
- SCI appealed the CT decision to the CAC and the CC cross appealed the penalty
 - *SCI argued that this must be prices which would be charged by new entrants without SCI's cost advantages – means excessive concentrations of control under apartheid cannot be tackled*
 - *A key question in determining economic value was thus whether SCI's cost advantage was 'special' or it should be passed on to customers*
 - *SCI argued that the historical advantages provided to Sasol are immaterial and nothing stops it from maximising the prices it charges local customers; lodged appeal of Tribunal decision*

Limitations of the Competition Policy Route



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- CC investigation following a request from the DTI to look into the pricing of polymer chemicals
- DTI was concerned with the pricing of important material inputs and their effect on the cost competitiveness of downstream industry
- Litigious nature of the competition policy route often means a delayed remedy to the market
- CC v SCI took about 7 years to get to the Tribunal decision (appeals delay further)
- Case effectively addressing a regulation/industrial policy loophole
- Are there other avenues? Possible alternative remedies:
 - *regulation (suggested by IPAP 6)*
 - *NERSA/DOE: DOE regulates the prices of fuel, and feedstocks are produced as a by-product of fuel production*
 - *Mining licence conditions: DMR Clause 8 of standard mining licence states that pricing minerals and derivative products to be sold at competitive market prices, non-discriminatory prices (in effect what Tribunal has ordered)*

CC Role in Coordinated Approach



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- IPP is often problematic in industries that are characterised by entrenched dominant firms seeking to protect their positions
- Likely that these are industries in which CC has intervened
- CC open to engaging with departments and other agencies
- Can contribute deep understanding of markets
- Ensure that proposed solutions will have pro-competitive outcomes



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THANK YOU