



## ACQUISITION OF SHARES IN MMEGI INVESTMENT HOLDINGS BY UNIVERSAL HOUSE REJECTED

The Competition Authority has rejected the acquisition of 28.73% shares in Mmegi Investment Holdings (Pty) Ltd by Universal House (Pty) Ltd. In its decision on 17th February, it said the transaction which had already been implemented without prior notification to the Authority, is likely to result in the prevention or substantial lessening of competition in the market under consideration.

Given the fact that the transaction had already been implemented, the Authority directed the parties to dispose of the 28.73% shares already acquired in Mmegi Investment Holdings (Pty) Ltd by Universal House (Pty) Ltd, to an entity or person(s) with no business interests affiliated in any way with the acquiring entity, within three (3) months from the decision date; which the Authority expects will be notified in the event that the transaction meets the stipulated merger control thresholds.

The Authority further directed the merging parties to report to it within 14 business days from the decision date how the disposal will be done. Further, within two months from the decision date, the merging parties are required to provide the Authority with a status update on their progress towards compliance with the decision.

Universal House, the acquiring entity, is a company duly incorporated in accordance with the Laws of Botswana. The entity is a Special Purpose Vehicle formed particularly for this transaction, and as such has no other business activities. Universal House is wholly owned by Mr. Jamali Seyed Abolfazi, a Botswana national with various business interests in Botswana, of which are predominantly in property development.

MIH, the target entity, is a company duly incorporated in accordance with the Laws of Botswana. MIH's business activities include printing,

publishing and distribution of books, publications and newspapers. The main shareholders of MIH are: Universal House, Methaetsile Leepile, Titus Mbuya, Botswana Mine Workers Union and Mmegi Publishing Trust. MIH is a holding company for Dikgang Publishing Company- publishers of Mmegi and The Monitor newspapers; CBET- publishers of the Botswana Guardian and the Mid-week Sun newspapers; Mmegi Publishing House; specialists in the publication of textbooks mainly for the school market; BONESA Distribution Company; and Mmegi Broadcasting Corporation.

MIH, through Mmegi Broadcasting Corporation, has 18% shareholding in Your Friend (Pty) Ltd, an entity incorporated in Botswana and trading as Gabz FM, a private radio station. The Directors of MIH are Methaetsile Leepile, Titus Mbuya, Efan Khan, Eugene Mukomeza, Bobana Badisang and Jack Tlhagale.

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Mr. Gideon Nkala addressing the Sowa Town Council on 22<sup>nd</sup> March

## CA ENGAGES KEY STAKEHOLDERS ON COMPETITION LAW

The Competition Authority continues to engage key stakeholders on various aspects of competition law in order to promote awareness and compliance with the Competition Act. In the last quarter, engagement with stakeholders included an address to budding youth entrepreneurs on 14th February at a workshop organised by the Ministry of Investment, Trade and Industry, a presentation to SMMEs organised by the Local Enterprise Authority (LEA) in Rasesa on 15th March and an address to the Sowa Town Council on 22nd March 2017.

The Director of Communications and Advocacy Mr. Gideon Nkala informed the youth at the Ramotswa workshop that Competition Law does not protect individuals and their businesses but protects competition. He said competition law will benefit up and coming business to access the market by ensuring that any anti-competitive conduct by established businesses through anti-competitive agreements, business restrictions

imposed by regulations and acquisitions and mergers that would stifle competition are swiftly identified and redressed. Nkala informed the youth that the Competition Authority has already made strides in its quest to make the market place accessible and competitive. He said the youth would be delighted to note that some youths have been beneficiaries of viable businesses facilitated by the Authority's intervention. He gave an example of a youth setting up a filling station business in Kanye as part of acquisition of the Shell Vivo shares that were made available to youths.

In his address to Sowa Town Councillors, Nkala further said Competition law controls selfish business gains, curbs consumer exploitation and strives to facilitate broad-based wealth creation by ensuring open and fair markets through reviewing commercial and administrative barriers to domestic trade.

Commenting after the presentation, some of the Councillors raised concerns

that franchises are very difficult businesses for Batswana to penetrate, and alleged that there are a lot of anti-competitive practices in that sector such as being directed where to procure supplies. They also wondered whether the Competition Authority deals with price control to ensure that businesses do not charge sky high prices.

The Councillors were told that franchising is a business model protected as an intellectual property and the franchisor has latitude to set requirements for the franchisee. Nkala informed the councillors that in the recent past, the Authority had received a number of complaints relating to access into franchises which practice he said was compounded by an arrangement that allowed one territorial franchisee in the whole country particularly for very lucrative franchisees such as those in the food sector. Batswana have complained about this

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Ms. Gladys Ramadi addressing a LEA Stakeholders workshop in Rasesa on 15<sup>th</sup> March

## CA Engages Key Stakeholders

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arrangement saying it limits access particularly for a market such as Botswana and the Competition Authority would inform itself about how these arrangements impact competition and advise government about these concerns. He said although franchises are protected as a business model they are still expected to comply with the Competition Act.

On regulating prices of goods, Nkala said the Authority does not regulate prices, and in fact is against price control as prices in the market should be determined through demand and supply in a competitive environment.

The Competition Authority will only intervene on prices when agents hijack the market by imposing artificial prices or engage in price fixing. In response to an assertion that some businesses dictate the price at which goods should be sold, such as in the pricing of Chibuku sorghum brew, he said the Authority would have to in-

vestigate if indeed the conduct that is known as resale price maintenance occurs which he said would contravene the competition Act. The ideal situation, he said, would be where distributors of Chibuku inform retailers what the recommended price of Chibuku could be other than tying their hands to a singular price. At the LEA Stakeholders Workshop participants expressed concern that it is difficult to penetrate the local poultry industry as the big players in the industry have agreements that lock out everybody else.

In response to these concerns, the Manager for Communications and Advocacy Ms. Gladys Ramadi informed the participants that the Competition Authority conducted a study with three other countries which has confirmed that ownership in the poultry sector is concentrated on a few players.

With regard to Botswana, the study revealed that ownership in the poultry sector is unique and complex. The

largest poultry producers in Botswana have ties to South African producers, and domestic producers are no match to these huge firms at the breeder and processing levels. Further, the tight trade restrictions protect these dominant players from competition. Ramadi noted that as a result of these dynamics, the price of chicken meat in Botswana is among the highest in the region.

She told the businesspersons that one of the mandates of the Competition Authority is to advise government on competition issues and therefore it has presented some recommendations to the relevant ministry based on the study.

In response to whether the Authority has any mechanisms in place to deal with cross-border anti-competitive practices, Ramadi said the Competition Authority of Botswana collaborates with other competition agencies, noting that last May SADC competition authorities signed an MoU which will facilitate the sharing of information and joint efforts in dealing with foreign companies that engage in anti-competitive practices across borders.

# SOUTH AFRICAN BANKS PROSECUTED FOR COLLUSION

The Competition Commission of South Africa on 15th February 2017 referred a collusion case to the Tribunal for prosecution against several banks including Bank of America Merrill Lynch International Ltd, BNP Paribas, JP Morgan Chase & Co, JP Morgan Chase Bank N.A, Investec Ltd, Standard New York Securities Inc., HSBC Bank Plc, Standard Chartered Bank, Credit Suisse Group; Standard Bank of South Africa Ltd, Commerzbank AG; Australia and New Zealand Banking Group Ltd, Nomura International Plc., Macquarie Bank Limited, ABSA Bank Limited (ABSA), Barclays Capital Inc, and Barclays Bank plc.

The Commission had been investigating a case of price fixing and market allocation in the trading of foreign currency pairs involving the Rand since April 2015. It found that from at least 2007, the banks (respondents) had a general agreement to collude on prices for bids, offers and bid-offer spreads for the spot trades in relation to currency trading involving US Dollar / Rand currency pair.

Further, the Commission found that the respondents manipulated the price of bids and offers through agreements to refrain from trading and creating fictitious bids and offers at particular times.

Traders of the respondents primarily used trading platforms such as the Reuters currency trading platform to carry out their collusive activities. They also used Bloomberg instant messaging system (chatroom), telephone conversation and had meetings to coordinate their bilateral and multilateral collusive trading activities. They assisted each other to reach the desired prices by coordinating trading times.

They reached agreements to refrain from trading, taking turns in transacting and by either pulling or holding trading activities on the Reuters currency trading platform. They also



created fictitious bids and offers, distorting demand and supply in order to achieve their profit motives.

The Commission is seeking an order from the Tribunal declaring that the respondents have contravened the Competition Act. Further, the Commission is seeking an order declaring that the banks are liable for the payment of an administrative penalty equal to 10% of their annual turnover. "The referral of this matter to the Tribunal marks a key milestone in this case as it now affords the banks an opportunity to answer for themselves," said the Commissioner, Tembinkosi Bonakele.

Meanwhile, the Commission of South Africa on February 20th filed with the Competition Tribunal a settlement agreement reached with Citibank N.A. for being part of the forex trading cartel. It was to pay an administrative penalty of R69 500 860 and undertook to cooperate with the Commission and avail witnesses to assist with the prosecution of other banks that colluded in this matter. Citibank N.A. will pay an administrative penalty of R69 500 860 (Sixty Nine Million Five Hundred Thousand Eight Hundred and Sixty Rands). This figure does not exceed 10% of Citibank N.A.'s annual turnover in the Republic of South Africa. Citibank N.A. undertook

to cooperate with the Commission and avail witnesses to assist the prosecution of the other banks that colluded in this matter. US Dollar / Rand currency pair. Further, the Commission found that Citibank N.A. and its competitors manipulated the price of bids and offers through agreements to refrain from trading and creating fictitious bids and offers at particular times.

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Currency trading is an act of buying and selling one country's currency for another country's currency.

The participants in currency trading are dealers, customers and brokers. Dealers are large financial institutions or banks that accept orders from customers to buy and sell currencies from customers, commonly known as market makers. Customers are entities or individuals that seek to exchange currencies by placing orders for trades with dealers.

They include corporations and asset managers such as hedge funds, mutual funds, pension funds, and various government financial institutions such as central banks and some individuals who exchange substantial quantities of currency. Brokers are intermediaries that facilitate trade between the dealers.

Source: Competition Commission South Africa

## Tapiwa Masie

**BCB:** Who is Tapiwa Masie?

**Tapiwa:** Most people call me Tapiwa, but my official names are Gosupamang Daisy Masie, named after both my paternal and maternal grandmothers. At the onset I will say that I am a wife and a mother of three beautiful little girls who I cherish with my life. I am a lawyer by profession, but have a passion for events management and planning which I do in my spare time. I hold a Bachelor of Laws Degree (LLB) from the University of Botswana, a Master of Laws Degree (LLM) from the Stellenbosch University and a Post Graduate Diploma in Economics for Competition Law from Kings College London. I currently work as Manager, Legal and Enforcement in the Competition Authority. I love spending time and travelling with family and friends, cooking and dancing whenever I get the chance to. I have been labelled as a perfectionist by many people and believe that you should put everything you can into anything you do, as if it's the last time you do it.

**BCB:** You like events management, what particularly interests you about organising events?

**Tapiwa:** The hype that comes with organising and planning for an event that you look forward to, putting things together towards the final day, working with and learning from others, the adrenaline rush, the panic, the satisfaction, the tears, the joy and finally the success... is what I love most in organising events. Seeing the final product, after going through all the emotions gives me so much pleasure. Doing one event and then learning from your mistakes to perfect the next gives me so much joy and helps me grow as a person. I do events not because I have to, but because I love to!

**BCB:** Why did you apply for a position at the CA?

**Tapiwa:** This was purely a decision based on the need for professional growth. A managerial position in a new agency that would be the first to enforce the newly passed Competition Act of Botswana was highly attractive to me so I put in my application. I was coming from an international trade law background and I felt it would blend well with competition law.

**BCB:** What have been your impressions so far? How are you blending?

**Tapiwa:** The two definitely go hand in hand. In order for Botswana to participate in world trade, it has to have a well-developed and competitive market that is able to compete vigorously for customers by being efficient, innovative, customer focused and able to offer value for money. At the Competition Authority, we want to ensure that enterprises are competitive in this way and that any conduct that denies consumers these benefits is eliminated. In this way, Botswana can grow its industries to gain access to the world market. Having the bigger picture of how interna-



Ms. Tapiwa Masie

tional trade law works has helped me to quickly appreciate why competition is important for our country and for any economy.

**BCB:** What are your duties and responsibilities at the CA?

**Tapiwa:** At the Competition Authority I am the Manager responsible for Legal and Enforcement. On the one hand we are responsible for providing legal advice to the Authority on all matters, while on the other, it is our duty to ensure the proper enforcement of the Competition Act. We carry this out through the provision of legal advice on case and non-case related matters, prosecution of cases before the Tribunal and other Courts, and making applications to the Courts as required for the enforcement of the Act.

**BCB:** What did you do before joining the CA?

**Tapiwa:** Before joining the Authority I worked as a State Counsel in the Attorney General's Chambers under the International and Commercial Division (ICD). In this role, I negotiated and drafted both commercial and international agreements on behalf of the Government and provided legal advice on various subjects of law including procurement law, media law, intellectual property, international trade law and commercial law. Before this, I had a brief stint at Standard Chartered Bank immediately after graduating from the University of Botswana.

**BCB:** What are your experiences at the Authority so far?

**Tapiwa:** Since I was assuming a managerial role

for the first time, the Authority has given me the experience to lead and to think strategically to take the organisation forward. It has equipped me with the knowledge and experience of enforcing competition law, a field of law I had never studied before. Also, being part of the first team to implement the Competition Act in Botswana has been a wonderful and enriching experience as I was challenged to develop processes, procedures and guidelines that had never been in place.

**BCB:** What is the best thing that has happened to you at the CA?

**Tapiwa:** In 2013 I received four awards during the end of year award ceremony where I was voted by colleagues as being the Most Innovative Employee, the Best Problem Solver and also received the Best Overall Employee of the Year and the CEO's Award of Excellence. It was really humbling to have been seen by colleagues as possessing these traits.

**BCB:** What do you find most challenging about the CA?

**Tapiwa:** The challenge that I have experienced at the Authority was with having to hit the ground running from the time I was appointed. Since inception I have had to deliver while learning on the job and this has been strenuous at times since most of the Authority staff were coming into contact with competition law for the first time. Having been exposed to the work of the Authority, training opportunities and engagements with more experienced colleagues from outside the country, the situation is less stressful, but I continue to learn and grow every day.

**BCB:** If you were to leave the CA now what special memories would you take with you?

**Tapiwa:** I would take away the memories of the birthday sessions that were held to honour employees on their birthdays. I felt that this was really special and thoughtful of the employer. I will also cherish all the team building sessions that were held where colleagues interacted in a more relaxed gathering. These sessions were always enjoyable and always brought the team together as everyone would pull together to ensure the success of such occasions.

**BCB:** Where do you see yourself five years from now?

**Tapiwa:** Hopefully still part of the Competition Authority in an Executive position, with more knowledge and abilities to take the Authority to the next level in the enforcement of competition law.

**BCB:** Is there any wisdom you wish to share?

**Tapiwa:** I believe and I have lived by the principle that hard work and patience will lead you to your desired goals.

# COMPETITION AUTHORITY IN PICTURES

## Presentation to the Sowa Town Council on 22<sup>nd</sup> March 2017



### Captions

1. Mr Gideon Nkala addressing Sowa Town Councillors 2, 3 & 4. Some of the Honourable Councillors asking questions

# CSR - DONATION TO NATA SENIOR SECONDARY SCHOOL

The CA through staff contributions on March 22<sup>nd</sup> donated sanitary towels to students of Nata Senior Secondary School under its Corporate Social Responsibility programme.



## Captions

1. Mr. Gideon Nkala handing over the donation    2 & 3. Students giving a word of appreciation    4. Students, Headteacher and CA staff

# CA at Stakeholders Workshop organised by the Local Enterprise Authority



## Captions

1, 2, 3 & 4. Participants at a stakeholders workshop organised by LEA on 15<sup>th</sup> March 2017

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