

BOTSWANA | COMPETITION AUTHORITY

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COMPETITION BULLETIN

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BOTSWANA'S COMPETITION AUTHORITY PEER REVIEWED

The Minister of Investment, Trade and Industry Hon. Bogolo Kenewendo led the Competition Authority team at the Intergovernmental Group of Experts (IGE) Voluntary Peer Review for Botswana which was held in Geneva, Switzerland on 12-13 July 2018. The Voluntary Peer Review is a comprehensive exercise which is carried out under the United Nations Conference on Trade and Development (UNCTAD). The main objective of the exercise is to identify areas for improvement in the legal and institutional framework, thereby contributing to enhancing the quality, efficiency and effectiveness of competition law enforcement. South Africa, Kenya and the United States were the peer reviewers at this session.

Speaking at the peer review session on 12th July 2018, Minister Kenewendo said she is satisfied that the exercise would lead to positive changes in the implementation of the competition and consumer protection laws in Botswana. She said the Competition Authority is relatively young, having been established in 2011, and is eager to learn from other experienced and more established agencies. "This exercise will accord us the opportunity to introspect on our current processes and will henceforth afford us the opportunity to learn from the experiences of com-



The Chairperson of the Competition Commission Dr. Onkemetse Tshosa and the Minister of Investment, Trade and Industry Hon. Bogolo Kenewendo at the IGE Session in Geneva

petition law enforcement bodies across the world that are present here today. Botswana volunteered for the review in recognition of the importance of competition policy and law as a catalyst for economic development and does not merely stop with limiting the effects of anti-competitive conduct but also has direct impact on economic growth", she said.

Hon. Kenewendo said Competition Policy and Law are premised on the desire to increase competitive market pressures, without which abuse of dominant position, collusion in markets, higher prices, low quality products and economic injustices will be prevalent. "To demonstrate

this, since establishment in 2011, the Competition Authority has been inundated with bid-rigging cases which account for almost 40 percent of the restrictive business cases handled, including cartels which constitute 30% of cases assessed.

She further informed the gathering that Parliament has just passed a new Act that will merge Competition and Consumer issues under one entity called the Competition and Consumer Authority. "The strengthening of consumer protection by placing the Consumer Protection Act under the administration of the

To Page 3

IN THIS ISSUE

Botswana's Competition Authority Peer Reviewed
Page 1

CA Resolves National Stadium Branding Deadlock
Page 2

CA Engages Stakeholders to Promote Awareness
Page 5

COMPETITION AUTHORITY RESOLVES NATIONAL STADIUM BRANDING DEADLOCK



The Competition Authority (CA) has resolved the branding deadlock between telecommunications giants, Mascom and Botswana Telecommunications Corporation Limited (BTCL), over the use of the National Stadium. There had been an impasse over the use of the stadium, forcing most of Botswana Premier League (BPL) clubs to opt for stadia outside Gaborone. Mobile network operator Mascom had bought space from Botswana National Sports Commission (BNSC), who are the stadium custodians. BTCL on the other hand protested that their competitor was gaining free mileage during BTCL sponsored league games.

However, early this year, BPL chairperson, Jagdish Shah indicated that the issue had been resolved and the stadium would be available for Premiership matches this season, and the CA played a key role in breaking the deadlock.

On 26th February 2018 the Authority received a complaint from a whistleblower alleging an unfair practice by Mascom and BNSC. The whistle-blower alleged that Mascom being one of the sponsors of Botswana Football Association (BFA) competitions had an exclusive agreement with BNSC for advertising at the National Stadium in Gaborone.

It was further alleged that the exclusive agreement gave Mascom the right to display its advertisements on the billboards around the Stadium at all times. The whistle-blower alleged that the agreement between Mascom and BNSC had foreclosed its competitors from displaying their advertisements around the National

Stadium, especially BTCL's mobile operator BeMobile, which is a BPL sponsor. It was further alleged that the exclusive agreement gives Mascom the right to display its advertisements on the billboards around the National Stadium at all times.

The practice was seen as unfair as it foreclosed other competitors from advertising and displaying their adverts at the stadium, particularly BTCL, which sponsors the football league. Such an arrangement, the whistleblower argued, deprived clubs of revenue, as they were forced to use facilities outside Gaborone. CA assessed the contract between Media Reach, which handles BNSC's advertising at the stadium, and realised that "BNSC has a duty to sell the other marketing rights of the National Stadium when all other advertising, be permanent or changeable are covered or uncovered."

"The provision to sell marketing rights to promoters or sponsors when the present advertisements are covered has always been present," CA noted.

However, an addendum was made to the agreement in April last year, where, in the event that the Mascom adverts are covered, there shall be compensation paid. CA said Media Reach had indicated that neither BNSC nor Mascom had any objection with BTC Premiership matches being played at the National Stadium.

"All that Mascom had requested for is that, if for any reason, its standing adverts are covered, so as not to be visible for a certain period of time, it needs a 15% reimbursement. This is because the agreement between Mascom and BNSC

is to display the advertisement boards for the whole month (24hours) and it is billed on that exposure," the CA report noted.

CA said there was a clause in the contract between BFA and BTCL, which entitled BTC to "sector exclusivity" ensuring that all advertising by sector players on match day are covered or not visible.

"This shows that BTCL would not allow Premier League games to be played at the National Stadium with Mascom advertisements visible, not the other way round." During investigations, the CA said, it became apparent that the BPL was responsible for preventing the teams from playing league matches at the National Stadium, and it was not an agreement between BNSC and Mascom.

Clubs blamed the agreement between BNSC and Mascom for their failure to use the stadium, and had to compromise the safety of their supporters by taking games outside Gaborone. The CA observed that "As a result a significant number of supporters were not able to attend games and this is an opportunity cost for teams as they mainly rely on gate takings to run their teams as almost all the teams in the league did not have sponsors".

The competition issue identified by the CA was vertical agreement in the form of exclusive dealing, which may entail an arrangement in which a downstream buyer requires an upstream seller not to sell its product to any competing downstream buyers.

According to section 27 (1) of the Competition Act "a horizontal agreement or

To Page 3

Competition Authority has been identified as a strategic policy consideration to strengthen and maintain an institutional emphasis on consumer welfare and to reduce the opportunity for businesses to deny consumers the benefits of competitive markets by engaging in unfair business practices”, said Hon. Kenewendo. Regarding the way forward, the min-

ister welcomed the Peer Review dissemination workshops. “I was reliably informed that it is within your established tradition that dissemination workshops for the benefit of the peer reviewed countries are organised after the peer review session. What I appreciate most, is that these workshops take place in the peer reviewed countries and target all

relevant stakeholders. The dissemination workshops will take us a long way as they will also bring tangible results and benefits of the peer review exercise”, she said. The Chairperson of the Competition Commission, Dr. Onkemetse Tshosa, and the CEO of the Competition Authority, Ms. Tebelelo Pule also had the opportunity to address the IGE.

STAKEHOLDERS MAKE SUBMISSIONS ON THE PROPOSED ACQUISITION OF SAHAM S.A. BY SANLAM EMERGING MARKETS (IRELAND) LIMITED



Some of the participants at the Saham-Sanlam public hearing on 31st July 2018

The Competition Authority held a public hearing on 31st July 2018 for the proposed acquisition of the entire issued share capital in Saham S.A. (Saham Group) by Sanlam Emerging Markets (Ireland) Limited (SEMIL). The hearing was at the CA offices with each of the parties to the transaction and other interested parties, pursuant to section 58(3) (a) of the Competition Act. The hearing was intended to allow the parties to the transaction to make verbal representations to the Authority with respect to the transaction, as well as allow their competitors

and the general public to express their views on the proposed acquisition. The acquiring enterprise, SEMIL, is an enterprise incorporated in accordance with the Laws of the Republic of Ireland and is wholly owned and controlled by SAN JV (RF) Proprietary Limited (SAN JV), a company incorporated in accordance with the Laws of the Republic of South Africa. SAN JV is in turn controlled by Sanlam Emerging Markets Pty Ltd (“SEM”), a South African company. Sanlam is a public undertaking with listings on the Johannesburg Stock Exchange (JSE) and the Namibian Stock Exchange (NSE).

The Sanlam Group provides among other things long-term (life) insurance; short-term (non-life) insurance; credit and banking facilities; reinsurance; investment management; and other financial services in various emerging markets in Africa, India and South-East Asia. In Botswana, the Sanlam Group has direct shareholdings in Africa Life Assurance Company (Botswana) (Pty) Ltd and Botswana Insurance Holdings Limited (“BIHL”) and indirectly, through BIHL, the Sanlam Group has shareholdings in various other entities.

The target enterprise, Saham Group (headquartered in the Kingdom of Morocco), is a Pan-African group with diversified business activities. The Saham Group provides insurance, through its Insurance Division, in 26 countries across Africa and the Middle East, with a large range of services such as insurance, assistance, consumer credit and third-party administration business services. The Saham Group, through its interests in Continental Reinsurance Company Limited (“Continental Botswana”), provides short-term reinsurance products to short-term insurance companies.

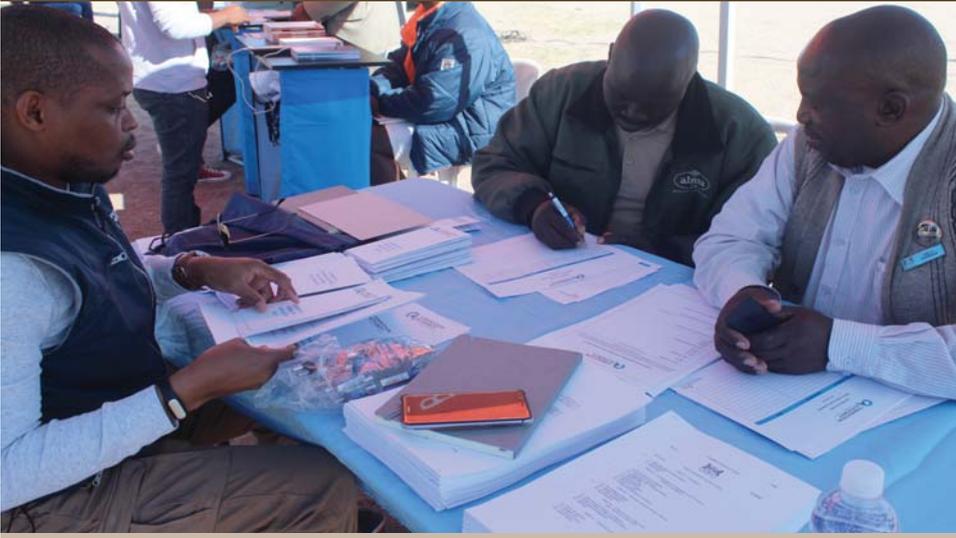
vertical agreement... may be prohibited by the Authority if, following an investigation such an agreement is found to have the effect of preventing or substantially lessening competition in a market for any goods or services in Botswana”. The Director of Communications and Advocacy, Gideon Nkala, said they are glad the matter has been resolved amicably. “Premiership football has returned to the National Stadium and this has eased the financial burden on teams and support-

ers. Our hope as the Competition Authority is that since the bigger issue has been dispensed with, the concerned parties would easily resolve the issue of who pays the fee for covering the standing advertising boards during Premiership matches at the National Stadium,” Nkala said. “Unfortunately, this is a matter for the BPL, the teams that use the National Stadium as a home ground, and the sponsor to resolve. It falls outside the remit of the Competition Authority.” Teams wanted

the cost of covering the Mascom advertisements during BPL games, to be borne by the BNSC as it was already being paid for the use of the facility. BNSC and BPL were not prepared to bear the costs of covering the advertisements. BPL Chief Executive Officer, Thabo Ntshinogang said the hosting club bears the costs. “The hosting club bears the costs or if it is any other competition of the league, BPL has to bear the cost,” Ntshinogang said.

Source: Mmegi/Competition Authority

CA ENGAGES STAKEHOLDERS DURING FAIRS AND EXHIBITIONS



CA's Ernest Bagopi briefing participants at the Ministry of Investment Trade and Industry outreach event in Shakawe

In the quest to increase awareness about its mandate, the Competition Authority participated for the first time at the Ghanzi District Agricultural Show which was held 3rd to 8th of July 2018. Deemed to be the biggest agricultural show in Botswana, the show was held under the theme “Sustainable Economic Diversification beyond 50 Years through Green Technology” and attracted multitudes of national and international exhibitors.

The show afforded the CA the chance to showcase its services and educate businesses, future entrepreneurs and members of the public who attended the event in Ghanzi about its mandate and that of the Competition Commission, competition law and its benefits to the economy.

The show was officially opened by the President of Botswana HE. Mokgweetsi Masisi who said agriculture remains a key priority for government. He said this was signified by the ongoing stakeholder consultations on a myriad of issues spearheaded by the Ministry of Agricultural Development and Food Security. These included an Agricultural Pitso that was held in Ghanzi in June 2018.

Commenting on the livestock sector, President Masisi said he is aware of the challenges faced by the Botswana Meat Commission (BMC) national abattoir. He revealed that the Government has come to a decision to privatise the abattoir with the intention to reduce the Government's stake in it.

Meanwhile, the CA participated in the Ministry of Investment, Trade and

Industry's outreach program dubbed ‘Metlhala ya Khumo’ in Shakawe on 28th July 2018 with a view to educating stakeholders in the area about its mandate.

The event was graced by the Minister Hon. Bogolo Kenewendo and the area Member of Parliament for Okavango Hon. Bagalatia Arone. Hon. Kenewendo told Shakawe residents that her ministry will use initiatives such as Metlhala ya Khumo to continue to reach out to different parts of the country such as the Okavango where the ministry's services are currently not adequate. She said this is an effort to encourage Botswana to play a role in diversifying the economy. “Such initiatives also have the potential to address issues of poverty and unemploy-

ment as attendees get some business advice and ideas”, the minister noted. She further informed Shakawe residents that Parliament recently passed eight bills that will ease doing business in the country.

Other parastatals falling under the ministry which participated in the outreach event were Botswana Bureau of Standards (BOBS), Companies and Intellectual Property Authority (CIPA), Gambling Authority, Botswana Development Corporation (BDC), Citizen Entrepreneurial Development Agency (CEDA) and the Local Enterprise Authority (LEA).

In an effort to reach young entrepreneurs and build a culture of competition, the Competition Authority also took part in the Molefi Senior Secondary School career Fair for completing Form 5 students on 9th August 2018. Over 800 students were briefed on the CA's mandate, the benefits of competition, anti-competitive business practices, mergers and acquisitions. They were also informed about the disciplines required to work at the competition agency. At the end of the presentations, students were asked questions to test their level of understanding and rewarded with various CA branded merchandise. They were also given educational materials such as brochures.

Members of the secondary school's Class of 87 had organised the career fair in order to assist students make informed career choices.



CA staff addressing Molefi Senior Secondary School students at the Career Fair on 9th August 2018

THE SWITZERLAND OF AFRICA



The Minister of Investment, Trade and Industry Hon. Bogolo Kenewendo addressing Swiss businesspeople and media at a Competition Authority cocktail party in Geneva on 12th July 2018

Minister of Investment, Trade and Industry, Hon. Bogolo Kenewendo, recently led the Botswana Competition Authority team to the United Nations Conference on Trade and Development (UNCTAD) Peer Review.

While in Geneva on the side-lines of the UNCTAD conference, Minister Kenewendo took time out to address and woo the Swiss business community to consider Botswana as a trade destination and she later hosted the UNCTAD competition and consumer international delegates, Swiss businesspeople and the Swiss media at a Competition Authority cocktail party at the Geneva Press Club.

Speaking at the Press Club, the Minister underscored Botswana's distinct value

proposition within a wider Southern African Development Community (SADC) regional market. She said Botswana stands out as a regional leader on key desirable attributes which are highly sought out by international investors and she singled out Botswana as peerless in many respects. She underscored that Botswana, unlike many of her peers, does not have foreign exchange controls restrictions on business ownership, low tax rates, is consistently ranked high by sovereign credit rating agencies, duty free import on machinery and equipment for manufacturing purposes, sound monetary policy, educated and peaceful workforce and preferential incentives on Special Economic Zones.

The minister told the Swiss businesspeople that there are a lot of similarities between Switzerland and Botswana, particularly the prudent management of the two countries economies. This particular trait, in the words of Minister Kenewendo has in some quarters seen Botswana stylised as the 'Switzerland of Africa'.

The minister observed that the Swiss economy is dominated by the service industry led by multinational corporations which have invested in the areas of pharmaceuticals, manufacturing (watchmaking), machinery and banking. These sectors, she said, dovetail with Botswana's priority sectors and provide an opportunity for Swiss businesses seeking to invest in emerging sectors such as mining beneficiation (diamonds, soda ash etc), financial and business services, commercial agriculture and agro-processing, cargo and

logistics, manufacturing (including car components and parts), and ICT to consider Botswana for their Africa operations.

After her presentation at the Press Conference, Minister Kenewendo was the Guest Speaker at the Competition Authority Cocktail Dinner which was hosted to honour, appreciate and recognise the role of international bodies such as UNCTAD and other international agencies in assisting the development and growth of the Botswana Competition Authority through several avenues culminating in the just ended UNCTAD Peer Review.



Above, Top right, & Bottom right. Some of the guests at the Competition Authority cocktail party in Geneva on 12th July 2018

Kamogelo Ditsele



Procurement and Asset Maintenance Officer - Mr. Kamogelo Ditsele

BCB: Who is Kamogelo Ditsele?

Kamogelo: I see myself as a very social and flexible guy but many of my friends think otherwise. I was born and raised in Mochudi Village.

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

Kamogelo: I applied for the position for career growth and secondly I wanted to relocate to Gaborone from Selebi Phikwe.

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

Kamogelo: Managing the supply chain of goods and services to meet the needs of the Authority and organise and control the cost of goods and services.

BCB: What did you do before you joined the CA?

Kamogelo: My career in Supply Chain Management started with Department of Information Services and thereafter joined the Botswana Defence Force as an Officer Cadet. I joined the Competition Authority from Water Utilities Corporation.

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

Kamogelo: People here are compassionate and caring.

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

Kamogelo: Being able to meet new people, given opportunities to further my studies, retreats and bonding outside the office.

BCB: What do you find most challenging

about the CA?

Kamogelo: I would say performing multiple roles in the procurement section was very challenging for me because I was the only employee in the section.

BCB: It is now official that you would be leaving the CA at the end of August 2018. Why are you leaving?

Kamogelo: For career growth and new opportunities.

BCB: Where are you going?

Kamogelo: I am moving to a private sector organisation with a health related mandate. It is very difficult to say goodbye.

BCB: What would tear you up thinking about the CA?

Kamogelo: The friendships made and compassionate people.

BCB: People don't get to decide what their legacy is. If you were given a chance to influence thoughts about your time at the Authority, how would you want to be remembered?

Kamogelo: I am very strict when it comes to compliance issues. Compliance to Procurement Policies in particular because that's what I have been hired to do in the Authority.

BCB: You seem to be a man on the move. Where do you see yourself five years from now?

Kamogelo: I will be self-employed probably owning a multi-million corporation



PICTORIAL



Part of the Botswana delegation at the IGE Session in Geneva in July 2018 - Chairperson of the Competition Commission Dr. Onkemetse Tshosa, Minister of Investment Trade and Industry Hon. Bogolo Kenewendo, Ambassador and Permanent Representative Botswana Mission to United Nations Office in Geneva Dr. Athalia Molokomme with UNCTAD's Economic Affairs Officers Ms. Elizabeth Gachuri (standing)



CA's Mergers review Committee members at the Sanlam public hearing on 31st July 2018 - L to R: Director of Investigations and Research Analysis Mr. Calistus Sengwatse, the Chief Executive Officer Ms. Tebelelo Pule and the Director of Communications and Advocacy Mr. Gideon Nkala



Some of the visitors to the CA stall at the Metlhalala ya Khumo outreach exhibition in Shakawe on 28th July 2018



Molefi Senior Secondary school students who were addressed by CA staff at their Career Fair on 9th August 2018

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