



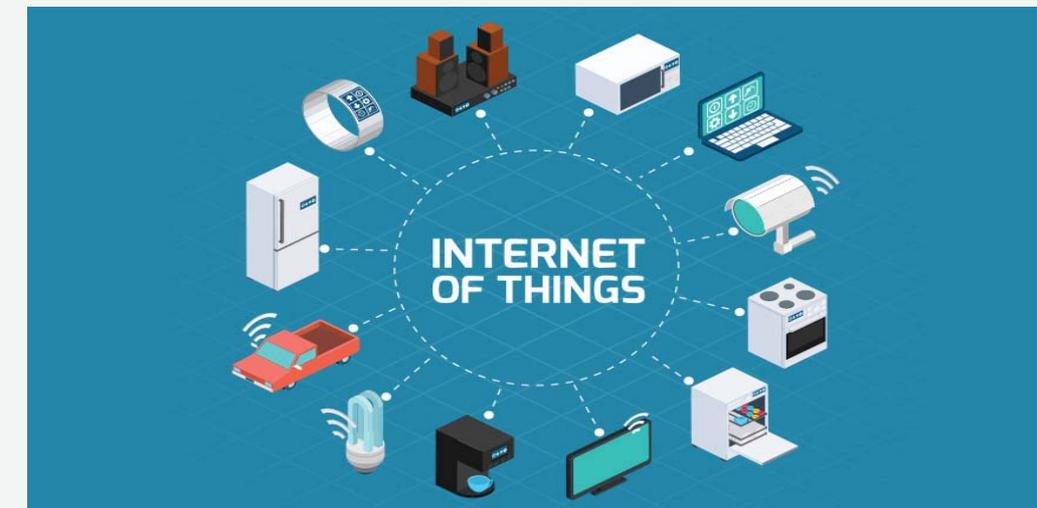
DIGITAL ECONOMY, INNOVATION AND COMPETITION WORLD COMPETITION DAY 2018

Botswana's Competition Authority (CA) joined other competition agencies and consumer groups in observing World Competition Day (WCD) on Wednesday 5th December 2018 under the theme *Digital Economy, Innovation and Competition*.

According to CUTS; Consumer Unity & Trust Society International, this year's theme was aimed at discerning the contemporary competition law benefits and challenges to consumers in view of the disruptive business models based on continuous innovation in today's digital economy.

In a press statement to mark the day, the CA said over the years, phenomenal innovations have transformed global economies, and countless products and services that are efficiently produced enter the global market daily. "These massive innovations have a positive effect on consumer choice, and most importantly, the net price of consumer goods and services has been reduced. Product innovation is a potent antidote against debilitating business practices such as market concentration and excessive pricing of commodities and services," CA said.

It said in the recent past, digitisation of markets has taken a foothold over world markets including making a sustained growth in emerging markets. "There is no doubt that the Internet has been the major catalyst of the digital economy. The Internet, big data, cloud computing and finan-



cial technologies have revolutionised the way trade is conducted, the use of digitised information and knowledge have become key factors of production; more transactions and trade interactions are conducted over the Internet," the statement reads.

The digital economy has created benefits and efficiencies by removing a number of middlemen in the supply chain and flattened the cost of goods and services while fuelling job opportunities and economic growth. More agile and smart networked Information and Communications Technologies (ICT) that facilitate payment, lending systems and promote financial inclusion underpin this economy.

However, the CA noted that while the digital economy and innovation herald all

the positive economic transformations and consumer welfare effects, there are attendant competition challenges that seem intent on diminishing the returns. "The biggest challenge is digital divide, reliability and security of data. Most users, particularly in emerging markets, do not have access into the digital highway. In addition, there is the unfortunate propensity, particularly in weak markets, for digital first movers to gain market traction and entrench themselves as quasi-monopolies.

These challenges, although not insurmountable, present competition agencies with an unfamiliar enforcement problem," the CA asserted. As regulators, competition agencies, including the Competition

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Authority of Botswana, have a duty to ensure that competition is protected and that consumers derive benefits from digital economies. While commemorating this day, the Competition Authority draws the public to the benefits of competition in the improvement of the people's livelihoods which are a

direct benefit of correcting market failures.

“Ever since the advent of the Competition Authority in Botswana there has been progressive overall improvement in market access and strengthening of competition across sectors,” the statement said.

The foundation of World Competition Day

was laid in 1980 when a United Nations Conference approved the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business. Competition agencies and consumer groups are advocating for the formal adoption of this day as a world competition day.

REQUEST FOR INFORMATION LIMITS AND EFFECTIVENESS THE CASE OF BOTSWANA



The CA's Ernest Bagopi presenting on Request for Information at the OECD in Paris on 30th November 2018

Requests for Information (RFI) is one of the investigative powers widely used by Botswana's competition agency. The Manager for Investigations and Research Analysis, Ernest Bagopi, said this when making a presentation at the OECD in Paris on 30th November 2018. He said the Authority may on its own initiative, or upon receipt of information or a complaint from the public start an investigation.

“In order to get relevant information, the Authority invites the parties concerned to submit information (hard or soft copies) which may assist the determination of the investigation. i.e., prove or disprove conduct, and a complainant is encouraged to provide as much information as possible,” Bagopi said. Respondents may be other stakeholders e.g., third parties, competitors, and relevant government institutions.

Bagopi said the Authority uses the Competition Act to request for information from the parties investigated, but information from the third parties is voluntary, even with merger transactions. However, for investigations, when the third party is found to be distracting the investigation by refusing to submit relevant information needed, the Authority is empowered by the Act to report such to the Botswana Police to deal with.

“An example is a case where a medical aid company (third party) was requested to provide some information that was relevant to

an investigation and it refused to give such.

The Authority approached the Botswana Police, and this led to the third party cooperating and submitting information as requested. This helped the Authority finalise the case thereafter,” he said.

Because of the Act not compelling third parties to submit information (on merger assessment transactions), some merger transactions have been assessed and decided on after giving up on receiving information from third parties. Confidentiality is normally the reason given by third parties for not submitting information as requested. Parties to a merger transaction are required to submit as much information needed for the proposed assessment. Minimum information to submit relates to: where the companies are registered, company directors and if they have control in other companies, transactions their companies engaged on in the past five years, rationale for the proposed merger, anticipated effects of the transaction both competition and public interest, value of the transaction, product or services the companies deal with, customers list competitors, market share estimates and latest financials. Other information needed for the assessment is requested from third parties though the challenge is that they are not compelled to provide that information.

Bagopi told the audience that in most, if not all unilateral conduct cases, though there

are legislative challenges for collecting information from third parties, in practice this has not been felt that much as parties comply and cooperate to submit information requested for the investigation. He cited recent cases of resale price maintenance (RPM) whereby the Authority investigated four major wholesalers alleged to be dictating retail selling prices to their banner group members, (small general dealers). “The concerned parties together with the majority of banner group members nationwide cooperated, to the extent that the Authority managed to secure hundreds of sworn witness statements. Analysis of information requested pointed to the existence of RPM conduct,” he said

For cartel cases, information is normally collected through dawn raids after securing a search warrant from a magistrate's court. However, information requested from the relevant stakeholders like procuring entities needed to beef up the one collected during a dawn raid is normally done through engagement of relevant third parties. The Authority normally allows parties to provide requested information in a period not exceeding 30 days. He said that all the information requested from the stakeholders should satisfy the legal procedure for collecting evidence.

Bagopi cited data management as one of the challenges investigators face when dealing with information received from stakeholders. He outlined that “some of the information that is received may be voluminous and needs sorting; some would not be reliable or outdated. Sworn witness statements collected are done manually and often witnesses have to be transported to a police station for taking oath; this takes time and distance is also a challenge.”

When sorting these large volumes of data, it is categorised in order of importance as well as the dates, and processed in three stages being: Validation or Initial Data Analysis i.e., checking that the data is consistent, was collected correctly, and represents a

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true reflection of events; Description i.e., the objective interpretation of this data; and Evaluation i.e., does the data tell a story that there is a conduct worth investigating? He asserted that the information requested is customised with the type of conduct being investigated.

“For cartel cases, documents requested relate to: Invitation to Tender (ITT) document in order to verify the existence of the tender; Directorship and shareholding; the total number and list of the companies that had submitted bids, the bids for all the tenderers, evaluation report and the company that got awarded the tender etc. In view of the nature of tendering, the volume of information and documents is very huge,” Bagopi said.

For other conducts, information requested is related to: ascertaining market definition, competitors, shareholding for the respondents; and any other information that could assist in establishing the existence of the conduct in question. E.g., business agreements etc.

On how the Authority detects false or misleading information from the parties, the participants were informed that the Authority has in place, Memoranda of Understanding with other regulatory bodies such as: Public Procurement and Asset Disposal Board, Gambling Authority, Non-Bank Financial Institutions Regulatory Authority, Bank of Botswana, Botswana

Unified Revenue Service, Companies and Intellectual Property Authority, Civil Aviation Authority of Botswana and the Directorate on Corruption and Economic Crime. “These regulatory bodies assist the Authority to verify information submitted by enterprises after a request.

This information could be tax returns, sales, production, company registration detail, shareholding etc. In a number of cases, it has been detected that the directors’ details that were submitted, did not reflect the ones showing at the regulatory authority, and this had to be addressed in order to give the direction that would lead to an informed decision,” Bagopi noted.

CA PART OF BUSINESS BOTSWANA DELEGATION TO ESTONIA

One of the key partners of the Competition Authority in its quest to usher in free and fair competition in the Botswana markets, Business Botswana, invited the Competition Authority to be part of a business delegation to Estonia from October 31st until November 3rd 2018. This was a follow up to the presentation made by Estonia’s Deputy Minister for Foreign Affairs, Honourable Vaino Reinart at the National Business Conference hosted by Business Botswana in September 2018. The objective of the mission was to establish trade and investment linkages between Botswana and Estonia, and for the Estonian Chamber of Commerce and Industry (ECCI) to formalise relations with Business Botswana; and to further appreciate how Estonia managed to become a high income country in a short space of time, with the best E-solutions (E-Government) for its citizens and residents.

While the business delegation was to benchmark and build business links with the Estonian business community, the Competition Authority joined the delegation largely to assure prospective investors that any investment in Botswana would be protected

in a regulated but competitive environment. During this business visit, the two business institutions signed a memorandum of understanding.

The Botswana delegation was led by the

Minister of Environment, Natural Resources Conservation and Tourism Hon. Tshekedi Khama, and the President of Business Botswana Mr. Gobusamang Keebine.



L to R: President of Business Botswana Gobusamang Keebine with Minister Tshekedi Khama and an Estonian official

CA EDUCATES MINISTRIES ON THE BENEFITS OF COMPETITION

The Competition Authority continues to educate and induct its myriad stakeholders on the benefits of competition. On Monday 26th November 2018, the Authority made a presentation to senior management of the Ministry of Tertiary Education, Research, Science and Technology at a procurement workshop held in Francistown. The purpose of the presentation was

two-fold; first to induct the management on the benefits of competition to an economy, and to educate the senior education managers on the dangers of bid-rigging, and its impact on the economy. Not only was the workshop informed of the many ways that tenderers employ to eliminate competition in the public bidding process, but they were also drilled on the variety of

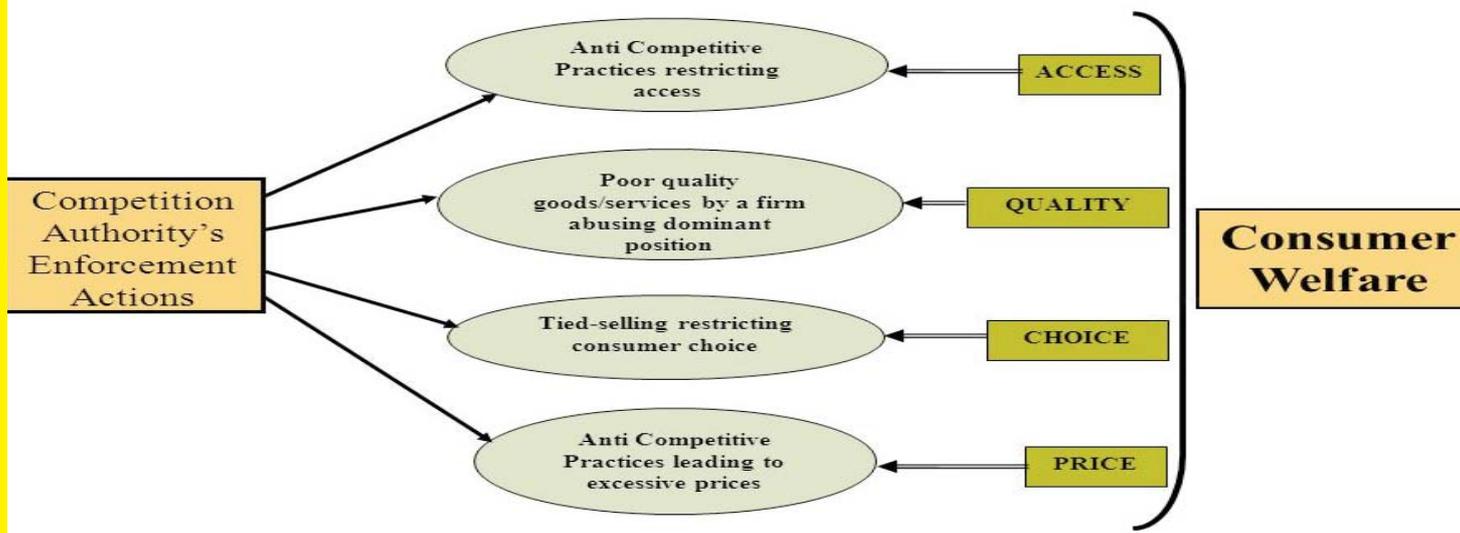
ways that they can put to bear to detect bid-rigging or tender collusion schemes.

Earlier, on 6th November, a presentation was made in Maun to staff of the Office of the President in the North-West region comprising procurement, finance and administration officers. They were

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inducted on the benefits of competition, what bid-rigging is and how to detect it, and the role public officers can play in facilitating bid-rigging, and how to combat it.

Competition Enforcement and Consumer Welfare



SOUTH AFRICAN LPG GAS COMPANIES TO BE PROSECUTED FOR PRICE FIXING



South Africa's Competition Commission has referred to the Competition Tribunal for prosecution, five Liquefied Petroleum Gas (LPG) companies for cartel conduct.

Totalgaz Southern Africa (Pty) Ltd (Totalgaz), Oryx Oil South Africa (Pty) Ltd (Oryx), KayaGas (Pty) Ltd (KayaGas), Easigas (Pty) Ltd (Easigas) and African Oxygen Limited (Afrox) have been charged for fixing gas cylinder prices.

The Commission's investigation found

that from 2015 to date; Totalgaz, Oryx, KayaGas, Easigas, and Afrox agreed on the amount to be paid as a deposit fee for the LPG cylinder by first time buyers of LPG. This conduct amounts to price fixing, which contravenes section 4(1)(b)(i) of the Competition Act 89 of 1998, as amended.

On 27th August 2015, the Commission initiated an investigation against the LPG companies for allegedly entering into an agreement and/or engaging in a concerted practice to fix the price paid as a deposit fee

for LPG cylinders by first time buyers of LPG in contravention of section 4(1)(b)(i) of the Act. On 14th October 2015, the Commission conducted a search and seizure operation at the premises of these companies, and seized hard copy documents and electronic data.

The Commission has asked the Tribunal to impose an administrative penalty of 10% of the annual turnover of each of Totalgaz, Oryx, KayaGas and Easigas. No administrative penalty is sought against Afrox.

Source: Competition Commission South Africa

Calistus Sengwatse



Director of Competition and Research Analysis - Mr. Calistus Sengwatse

news with bad publicity. It was an entity everybody wanted to identify with, and it still is. So when the opportunity arose through an advert, I took it up.

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

Calistus: I am the Director responsible for both investigations and research. I head a team of professionals who execute these two mandates.

BCB: What did you do before joining the CA?

Calistus: My first employment was with the Botswana Police and served in Letlhakane and subsequently in Orapa, where I left as the Station Commander. After qualifying as a Chartered Accountant, I joined UB Finance Department as a bean counter

(accountant). I later joined FNB in the same role and progressed through different departments within the bank. I then moved on to the Financial Intelligence Agency and finally to CA.

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

Calistus: The CA is a closely knit family, the love, mutual respect and warmth that prevail among the staff members has been the best experience for me.

BCB: Drawing from your past experience and training, do you think any of your past training or employment had prepared for the challenges that you encounter at the CA?

Calistus: Very much so. The banking sector is highly regulated. Therefore this has bred creativity by the professionals to maximise profits. Therefore this can be a breeding ground for competitors in the sector to collude. And there is a very thin line in the way investigations and analysis are done between the Financial Intelligence Agency and the Competition Authority.

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

Calistus: Having had the opportunity to present at the ICN conference in India. The feedback that I got from colleagues and participants was very assuring.

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

Calistus: The CA staff compliment is very thin. To have the impact of the organisation felt in the economy is a very difficult exercise. However, we strive to do so much more with so very little.

BCB: There are some in our community who believe the CA is taking time to have the desired impact or it is simply not doing enough. You are the man who is driving the investigations. Is this perception right?

Calistus: There is a lot of comparison between ourselves and the more developed economies such as South Africa. We are trying, but the budget has been a major impediment. Our society expects immediate results and impact. In summary the perception is not right. However, we are striving to do more with less.

BCB: In other jurisdictions people talk of busting cartels, we seldom hear of the existence of cartels in our economy. How prevalent are cartels in our economy?

Calistus: In a growing economy like ours where there is a continuous development projects and social services, dividing and allocation of tenders will be an attractive option for some businesses. So there is some existence of cartels as indicated in the investigations we undertake, as well some that have gone through the tribunal adjudication.

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

Calistus: Warmth of the personnel.

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

Calistus: I have reached the pinnacle of my profession. Whatever the future holds it will be acceptable.

BCB: Is there any wisdom you wish to share?

Calistus: Always remain humble and relaxed under all circumstances.

BCB: Tell us about yourself!

Calistus: I was born in Gaborone and started school at Lesedi Primary school, and finished at St Joseph's College. I did the first degree and MBA at UB, qualified as a chartered accountant at BAC. I studied towards CIPS qualification in the UK. I also did ACAMS (anti-money laundering) in the US.

BCB: You possess some of the highly sought qualifications. Anti-Money Laundering must be an exciting challenge to a professional like yourself. Is there any link between anti-competition and anti-money laundering?

Calistus: There is a very strong link between these two fields. Money Laundering is an act of concealing illicit funds and eventually putting them through the financial system. It is these funds that lead greedy enterprises to act in anti-competitive behaviour mostly charging predatory prices, yet banking huge sums of cash. This will affect ethical businesses and drive them out of business.

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

Calistus: Since inception, the CA has always been an attractive organisation which, unlike some parastatals, was never in the

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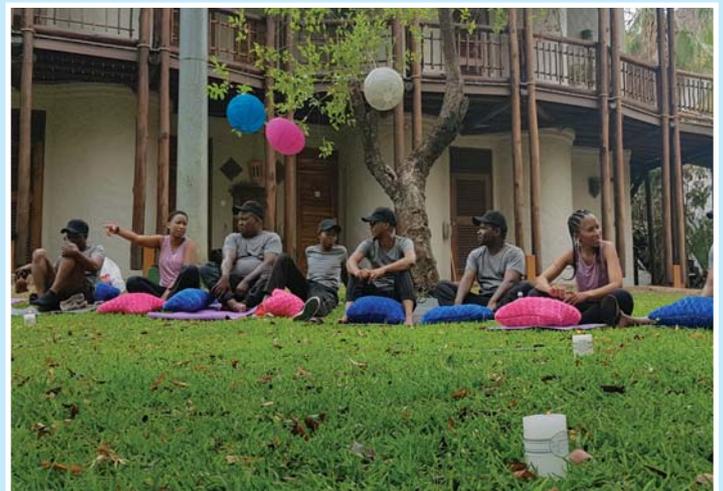
CA's Kelebogile Ngwenya with guests at the 2018 Global Expo in Gaborone



Participants at the OECD Conference on 30th November 2018



CA Staff at Victoria Falls in Zimbabwe on 22nd November 2018



CA Staff at a Team Building Exercise

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